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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 930.

LOWRY W. HUMES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED MARCH 30, 1896.

(16,242.)

11530

(16,242.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 480.

LOWRY W. HUMES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

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1 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

Transcript.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its May and November terms, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWERY W. HUMES, Defendant. } No. 1982.

Chas. B. Simonton, U. S. attorney at Memphis, for the plaintiff.
Ganit & Patterson, Memphis, Tennessee; James M. Greer, Memphis, Tennessee, attorneys for defendant.

2 UNITED STATES OF AMERICA,
Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of said District, in the Sixth Judicial Circuit of the United States, May Term, A. D. 1895.

The grand jurors of the United States within and for the western division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empanneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths present that Lowry W. Humes, yeoman, of the county of Shelby and State of Tennessee, and late of the circuit and district aforesaid, on, to wit, the first day of April, A. D. 1895, in the county of Shelby aforesaid and State of Tennessee, and in the circuit and the western division of the district aforesaid, to wit, at Memphis, in said county and within the jurisdiction of this court, unlawfully, with force and arms, did wrongfully withhold from William Anderson a large sum of money, to wit, $486.40, the same then and there being part of a pension allowed and due by the United States to the said William Anderson, and the said Lowry W. Humes then and there being an agent for and a person instrumental in prosecuting a claim of said William Anderson for the pension aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

3 II.

And the grand jurors of the United States aforesaid within and for the western division of the western district of Tennessee, in said

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sixth judicial circuit, duly elected, empanneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that the said Lowry W. Humes, yeoman, of the county of Shelby and State of Tennessee, and late of the circuit and district aforesaid, on, to wit, the first day of April, A. D. 1895, in the county of Shelby aforesaid and State of Tennessee, and in the circuit and the western division of the district aforesaid, to wit, at Memphis, in said county and within the jurisdiction of this court, being then and there an agent and attorney for and a person instrumental in prosecuting a certain claim for William Anderson for a pension from the United States, unlawfully did demand, receive, and retain from the said William Anderson, for the services and instrumentality of him, the said Lowry W. Humes, in prosecuting the claim last aforesaid, a greater compensation than $25.00, to wit, the sum of $486.40, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

4 III.

And the grand jurors of the United States aforesaid within and for the western division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empanneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that the said Lowry W. Humes, yeoman, of the county of Shelby and State of Tennessee, and late of the circuit and district aforesaid, on, to wit, the first day of April, A. D. 1895, in the county of Shelby aforesaid and State of Tennessee, and in the circuit and the western division of the district aforesaid, to wit, at Memphis, in said county, and within the jurisdiction of this court, unlawfully did wrongfully withhold from one Isaac Bloodson a large sum of money, to wit, the sum of $517.20, the same then and there being part of a pension allowed and due by the United States to the said Isaac Bloodson, and the said Lowry W. Humes then and there being an agent for and a person instrumental in prosecuting a claim of said Isaac Bloodson for the pension aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

5 IV.

And the grand jurors of the United States aforesaid within and for the western division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empanneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that the said Lowry W. Humes, yeoman, of the county of Shelby and State of Tennessee, and late of the circuit and district aforesaid, on, to wit, the first day of April, A. D. 1895, in the county of Shelby aforesaid and State of Tennessee, and in the circuit and the western division of the

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district aforesaid, to wit, at Memphis, in said county and within the jurisdiction of this court, being then and there an agent and attorney for and a person instrumental in prosecuting a certain claim for Isaac Bloodson for a pension from the United States, unlawfully did demand, receive, and retain from the said Isaac Bloodson for the services and instrumentality of him, the said Lowry W. Humes, in prosecuting the claim last aforesaid, a greater compensation than $25.00, to wit, the sum $517.20, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

6 V.

And the grand jurors of the United States aforesaid within and for the western division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empanneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that the said Lowry W. Humes, yeoman, of the county of Shelby and State of Tennessee, and late of the circuit and district aforesaid, on, to wit, the first day of April, A. D. 1895, in the county of Shelby aforesaid and State of Tennessee, and in the circuit and the western division of the district aforesaid, to wit, at Memphis, in said county and within the jurisdiction of this court, did wrongfully withhold from one Ann Galloway a large sum of money, to wit, the sum of $120.13, the same then and there being part of a pension allowed and due by the United States to the said Ann Galloway, and the said Lowry W. Humes then and there being an agent for and a person instrumental in prosecuting a claim of said Ann Galloway for the pension aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

7 VI.

And the grand jurors of the United States aforesaid within and for the western division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empanneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that the said Lowry W. Humes, yeoman, of the county of Shelby and State of Tennessee, and late of the circuit and district aforesaid, on, to wit, the first day of April, A. D. 1895, in the county of Shelby aforesaid and State of Tennessee, and in the circuit and the western division of the district aforesaid, to wit, at Memphis, in said county and within the jurisdiction of this court, being then and there an agent and attorney for and a person instrumental in prosecuting a certain claim for Ann Galloway for a pension from the United States, unlawfully did demand, receive, and detain from the said Ann Galloway for the services and instrumentality of him, the said Lowry W. Humes, in prosecuting the claim last aforesaid, a greater compensation than $25.00, to wit, the sum of $120.13, contrary to the form of the statute

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in such case made and provided and against the peace and dignity of the United States.

8 VII.

And the grand jurors of the United States aforesaid within and for the western division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empanneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that the said Lowry W. Humes, yeoman, of the county of Shelby and State of Tennessee, and late of the circuit and district aforesaid, on, to wit, the first day of April, A. D. 1895, in the county of Shelby aforesaid and State of Tennessee, and in the circuit and the western division of the district aforesaid, to wit, at Memphis, in said county and within the jurisdiction of this court, unlawfully did wrongfully withhold from one Joshua Haynes a large sum of money, to wit, the sum of $116.00, the same then and there being part of a pension allowed and due by the United States to the said Joshua Haynes, and the said Lowry W. Humes then and there being an agent for and a person instrumental in prosecuting a claim of said Joshua Haynes for the pension aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

9 VIII.

And the grand jurors of the United States aforesaid within and for the western division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empanneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that the said Lowry W. Humes, yeoman, of the county of Shelby and State of Tennessee, and late of the circuit and district aforesaid, on, to wit, the first day of April, A. D. 1895, in the county of Shelby aforesaid and State of Tennessee, and in the circuit and the western division of the district aforesaid, to wit, at Memphis, in said county and within the jurisdiction of this court, being then and there an agent and attorney for and a person instrumental in prosecuting a certain claim for Joshua Haynes for a pension from the United States, unlawfully did demand, receive, and detain from the said Joshua Haynes for the services and instrumentality of him, the said Lowry W. Humes, in prosecuting the claim last aforesaid, a greater compensation than $25.00, to wit, the sum of $116.00, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

10 IX.

And the grand jurors of the United States aforesaid within and for the western division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empanneled, sworn, and charged to enquire within and for said division of the district afore-

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said, in said circuit, upon their oaths further present that the said Lowry W. Humes, yeoman, of the county of Shelby and State of Tennessee, and late of the circuit and district aforesaid, on, to wit, the first day of April, A. D. 1895, in the county of Shelby aforesaid and State of Tennessee, and in the circuit and the western division of the district aforesaid, to wit, at Memphis, in said county and within the jurisdiction of this court, did wrongfully withhold from one Whitfield Prior a large sum of money, to wit, the sum of $15.80, the same then and there being part of a pension allowed and due by the United States to the said Whitfield Prior, and the said Lowry W. Humes then and there being an agent for and a person instrumental in prosecuting a claim of said Whitfield Prior for the pension aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

J. A. TAYLOR,
U. S. District Attorney for Western District of Tennessee.

[Endorsed:] No. 1982. Circuit court of the United States, western district of Tennessee, western division. The United States *vs.* Lowry W. Humes. Indictment for withholding pension money. Violation of sections — of United States Revised Statutes. Witnesses: William Anderson, Istha Finlay, Isaac Bloodson, Fides Schneider, Joshua Haynes, Ann Galloway, Lula Galloway, Whitfield Pryor. Sworn to give evidence before the grand jury on this indictment this 29 day of May, A. D. 1895. J. M. Henochsberg, foreman of the grand jury. A true bill. J. M. Henochsberg, foreman of the grand jury. Returned into open court by the grand jury and filed this 31 day of May, A. D. 1895. J. B. Clough, clerk; —— ——, D. C.

11 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

At Memphis, in the circuit court of the United States within and for the said western division of the western district of Tennessse, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof began and held for its May term, A. D. 1895, at the United States courthouse, in the city of Memphis, in said district, on, to wit, the 31st day of May, A. D. 1895, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWREY W. HUMES, Defendant. } No. 1982.

This day came the district attorney and announced to the court that the grand jury were waiting to report; whereupon came the grand jury in a body into open court and presented to the court the following indictment, endorsed "a true bill" and signed by the foreman of the grand jury, viz, No. 1982, The United States *vs.* Lowrey W. Humes, indictment for violating the laws by with-old-

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ing pension money, and the clerk is hereby directed to properly file and docket the said indictment according to the practice of the court, and on motion of the district attorney it is hereby ordered by the court that the usual writ of capias issue in the foregoing case, returnable to the next term of the court, and that said case be, and it is hereby, continued.

Whereupon the following capias writ was issued:

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of Lowrey W. Humes, if to be found in your district, and him safely keep, so that you have him before the judges of the circuit court of the United States, at a term of said court to be held for the western division of the district aforesaid, at the court-house, in the city of Memphis, on the fourth Monday in November, A. D. 1895, then and there to answer the United States on a bill of indictment against him for violation of the laws of the United States by unlawfully with-oldin-pension money. Herein fail not, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said [SEAL.] circuit court the 31st day of May, A. D. 1895, and 119th year of American Independence.

JOHN B. CLOUGH, *Clerk.*

Marshal's Return.

This writ came to hand on the day of its issuance and was executed by arresting the said defendant and taking him before U. S. Commissioner J. B. Clough, at Memphis, Tennessee, on the fifth day of June, A. D. 1895, where he gave bond for his appearance before the court.

J. A. MUNSON,
U. S. Marshal,
By —— ——,
Deputy Marshal.

Returned and filed in court on the day and date last aforesaid, at Memphis, Tennessee.

JOHN B. CLOUGH, *Clerk.*

12 UNITED STATES OF AMERICA, }
Western District of Tennessee, Western Division. }

Know all men by these presents that we, Lowry W. Humes, as principal, and W. Y. C. Humes and J. W. Allison, as sureties, acknowledge ourselves to owe and be indebted unto the United States of America in the sum of ten hundred dollars, to be levied of our proper goods and chattels, lands and tenements, to the use of the United States, but to be void if the said principal do well and

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truly make his personal appearance before the circuit court of the United States for the western division of the western district of Tennessee, at the Federal court-room of the Government building, in the city of Memphis, Tennessee, on the fourth Monday in November next, A. D. 1895, that being the first day of the regular November term thereof, then and there to answer the United States on a charge against him for violation of the laws of the United States by unlawfully withholding pension money, and continue in attendance at said term of said court from day to day until discharged, and abide the decision of the said court in the premises.

Witness our hands and seals this fifth day of June, A. D. 1895.

L. W. HUMES. [SEAL.]
W. Y. C. HUMES. [SEAL.]
JO. W. ALLISON. [SEAL.]
—— ——. [SEAL.]

Signed, sealed, and acknowledged before me, at Memphis, Tennessee, and approved by me this fifth day of June, A. D. 1895.

J. B. CLOUGH,
Commissioner of the Circuit Courts of the United States for said Western District of Tennessee.

[Endorsed:] No. 1982. U. S. circuit court, western division of the western district of Tennessee. The United States *vs.* Lowery W. Humes. Appearance bond to November term, A. D. 1895. Dated at Memphis, Tenn., June 5, A. D. 1895. Filed at Memphis, Tenn., June 5, 1895. John B. Clough, clerk, by —— ——, D. C.

13 UNITED STATES OF AMERICA,
Western District of Tennessee.

This day personally appeared before the undersigned, one of the commissioners of the circuit courts of the United States for said western district of Tennessee, J. W. Allison, one of the sureties on the bail bond herein, who, being by me first duly sworn according to law, makes oath and says that he is a resident of the western district of Tennessee and of the county hereinafter named, and is worth the sum of five thousand dollars in unencumbered real and personal property, in his own name and right, over and above his legal debts and liabilities and exemptions and subject to execution under the laws of the State of Tennessee; that said property is situate in Memphis, in the — civil district of the county of Shelby and State of Tennessee, in said district, and described as follows.

JO. W. ALLISON.

Subscribed and sworn to before me this 5 day of June, A. D. 1895.

J. B. CLOUGH,
Commissioner of the Circuit Courts of the United States for said District.

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[Endorsed:] No. 1982. The United States of America, western district of Tennessee. The United States *vs.* L. W. Humes. Qualification of surety on bail bond. Filed with the bond 5 day of June, A. D. 1895. J. B. Clough, clerk, by —— ——, deputy.

UNITED STATES OF AMERICA,
Western District of Tennessee.

This day personally appeared before the undersigned, one of the commissioners of the circuit courts of the United States for said western district of Tennessee, W. Y. C. Humes, one of the sureties on the bail bond herein, who, being by me first duly sworn according to law, makes oath and says that he is a resident of the western district of Tennessee and of the county hereinafter named, and is worth the sum of five thousand dollars in unencumbered real and personal property, in his own name and right, over and above his legal debts and liabilities and exemptions and subject to execution under the laws of the State of Tennessee; that said property is situate in Memphis, in the — civil district of the county of Shelby and State of Tenneesee, in said district, and described as follows.

W. Y. C. HUMES.

Subscribed and sworn to before me this 5 day of June, A. D. 1895.

J. B. CLOUGH,
Commissioner of the Circuit Courts of the United States for said District.

[Endorsed:] No. 1982. The United States of America, western district of Tennessee. The United States *vs.* L. W. Humes. Qualification of surety on bail bond. Filed with the bond 5 day of June, A. D. 1895. J. B. Clough, clerk, by —— ——, deputy.

14 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 26th day of November, A. D. 1895, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Came the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorneys, when the said defendant, by his attorneys, moved the

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court to quash the indictment herein; which motion, for satisfactory reasons, is hereby overruled; and thereupon the said defendant, by his attorneys, moved the court to compel the United States to elect some one of the offenses charged in the indictment herein on which to put defendant now upon his trial; which motion, for satisfactory reasons to the court appearing, is hereby overruled.

15 Thereupon the said defendant, being duly arraigned at the bar of this court in this behalf, for plea says he is not guilty in manner and form as herein charged against him. Whereupon, on motion of the district attorney, it is ordered that a jury do come; and thereupon came a jury of good and lawful men, to wit, A. F. Davis, R. B. Fanning, J. T. Long, J. A. Ferguson, Hugh A. Banks, T. J. Mann, John A. Johnson, W. H. Allen, R. H. Vance, W. J. Chase, J. D. Huhn, and E. E. Gorge, who were duly elected, empanelled, tried, and sworn well and truly to try the issue herein joined and of the said defendant a good deliverance make and a true verdict render according to the law and the evidence, when the trial of this case was begun, and, there not being sufficient time to conclude the same today, the further consideration thereof is hereby postponed until tomorrow.

16 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 27th day of November, A. D. 1895, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Came again the district attorney, on behalf the United States, and the said defendant in his own proper person, accompanied by his attorneys, and came also the jury empanelled and sworn herein on yesterday, when the trial of this case was resumed, and, there not being time to complete this trial today, its further consideration is hereby postponed until tomorrow morning.

17 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States

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court-house, in the city of Memphis, in said district, on, to wit, the 28th day of November, A. D. 1895, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Came again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorneys, and came again also the jury empanelled and sworn herein, when the trial of this case was again resumed, and, there not being time to complete the same today, its further consideration is hereby postponed until tomorrow morning.

18 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 29 day of November, A. D. 1895, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Came again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorneys, and came again also the jury heretofore sworn and empanelled herein, when the trial of this case was again resumed, and, there not being time to complete the same today, its further consideration is hereby postponed until tomorrow morning.

19 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, on to wit, the 30th day of November, A. D. 1895, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Came again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by

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his attorneys, and came again also the jury heretofore empanelled and sworn herein, when the trial of this case was again resumed, and, there not being time to complete this trial today, its further consideration is hereby postponed until next Monday.

20 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 2d day of December, A. D. 1895, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Came again the district attorney, on behalf the United States, and the said defendant in his own proper person, accompanied by his attorneys, and came again also the jury heretofore empanelled herein, when the district — announces to the court that he is unwilling to prosecute the said defendant further on the fifth and sixth counts of the indictment herein, and it is therefore hereby ordered by the court that said defendant be discharged as to said fifth and sixth counts; and it is hereby further ordered by the court, for satisfactory reasons to the court appearing, the jury in this
21 case be kept together and boarded and lodged at the expense of the United States during the further consideration of this case; and thereupon the further consideration of this case was resumed, and, there not being time to complete the trial thereof today, its further consideration is hereby postponed until tomorrow.

22 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 3d day of December, A. D. 1895, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Came again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by

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his attorneys, and came again also the jury heretofore sworn and empanelled herein, when this trial was again resumed, and the jury, having heard the testimony, listened to the arguments of counsel, and received the charge of the court, upon their oaths do say they find the said defendant not guilty in manner and form as in the second, fourth, eighth, and ninth counts of the indictment in this case, and that they are not able to agree upon the issues joined herein upon the first, third, and seventh counts of the said indictment, as to which said last-named three counts a mistrial is hereby accordingly entered.

23 UNITED STATES OF AMERICA.
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 9th day of December, A. D. 1895, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs. } No. 1982.
LOWRY W. HUMES, Defendant.

Came again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorneys, when, on motion of the district attorney, it is ordered that a jury do come; and thereupon came a jury of good and lawful men, to wit, William Porter, L. M. Dean, R. H. Morgan, J. H. Shepherd, J. J. Heinrich, R. A. Spicer, J. H. Morris, J. P. Moses, V. Kimbro, George D. Green, G. W. Farrar, and James Degnum, who were duly elected, empanelled, tried, and sworn well and truly to try the issue herein joined and of the said defendant a good deliverance make and a true verdict render according to the law and the
24 evidence, when the trial of this case was commenced, and, there not being time to conclude the same today, its further consideration is hereby postponed until tomorrow; and, for satisfactory reasons to the court appearing, it is hereby ordered by the court that during the trial of this case the jury be kept together, and boarded and lodged at the expense of the United States.

25 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States

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court-house, in the city of Memphis, in said district, on, to wit, the 10th day of December, A. D. 1895, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Came again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorneys, and came again the jury heretofore empanelled and sworn herein on yesterday, when this trial was again resumed, and, there not being sufficient time to complete the same today, its further consideration is postponed until tomorrow.

26 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 11th day of December, A. D. 1895, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Came again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorneys, and came again also the jury heretofore last empanelled and sworn herein, when this trial was again resumed, and, there not being time to complete the same today, *is* further consideration is hereby postponed until tomorrow morning.

27 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 12th day of December, A. D. 1895, in the following cause, to wit:

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THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Came again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorneys, and came again also the jury heretofore empanelled and sworn herein, when the trial of this case was again resumed, and the jury, having heard the testimony, listened to the arguments of counsel, and received the charge of the court, upon their oaths do say they find the defendant, Lowry W. Humes, guilty in manner and form as charged in counts numbers one and three of the indictment herein and not guilty in manner and form as charged in the seventh count of the indictment herein;
28 whereupon the said defendant, by his attorneys, moves the court for a new trial herein; which said motion is reserved for argument and consideration to a future day.

29 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States courthouse, in the city of Memphis, in said district, on, to wit, the 6th day of January, A. D 1896, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Came again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorneys, when this case came on for decision upon the defendant's motion for a new trial heretofore made and entered herein, and the same, having been argued by counsel and considered by the court, is hereby denied and overruled. On motion of the district attorney for sentence upon the said verdict, it is therefore hereby ordered and considered by the court that for said offence the said defendant be imprisoned at hard labor in the Ohio pen-
30 itentiary, at Columbus, in the State of Ohio, for the term of two years from this date, that penitentiary in such behalf having been designated by the Attorney General of the United States as prescribed by law, and that said defendant be fined the sum of five hundred dollars for the use of the United States, and pay the costs of this prosecution, and that he stand committed until said fine and costs are paid.

BLEED THROUGH

31 *Opinion on Motion for a New Trial.*

Filed Jan'y 6, 1896.

Circuit Court of the United States, Western District of Tennessee.

THE UNITED STATES
vs.
LOWRY W. HUMES. } No. 1982.

CLARK, *J.:*

I have considered the various grounds urged in support of the motion for a new trial, and I may as well in the outset dispose of the affidavits offered in support thereof. Passing by any question as to the sufficiency of the reasons offered for not introducing this proof on the trial, I think that the testimony indicated in these affidavits is merely cumulative, and that the affidavits being *ex parte*, and the defendant thereby enabled to obtain from the witnesses the strongest possible statements and one unaffected by cross-examination, the proof, if it could be made as disclosed by these affidavits, is not important and could have but little, if any, possible effect upon the case in view of the proof already in. The first ground assigned as an objection to the charge I do not think is well taken. There was no request for any additional instruction, and there was, in my opinion, no basis in the proof for such in-
32 struction and no state of facts to which it would have been applicable. In regard to the second objection to the charge, the court expressed to the jury the opinion that upon defendant's own testimony he was instrumental in the prosecution of the pension so far as to make him liable, but left the jury free to find the fact. I am unable to think now that there was any controversy whatever over this proposition, considered with reference to the proof in the case. There was no contention in the argument as to whether the defendant was agent or attorney, but only whether he was instrumental. In regard to the third objection, I think it was proper to direct the minds of the jury to the contention of each side about the disputed check, which was done, and leave the jury to pass upon the really disputed fact in the case. When the charge is taken as a whole, I think it was full in this respect and fair to the defendant. As to the fourth objection, I do not think it was error for the court to have left that instruction as given, but out of abundant caution the jury was recalled and the instruction in this respect withdrawn from them in such way that it could not have possibly hurt the defendant.
33 The fifth ground I do not think is well taken. The correctness of the instruction is not to be determined by any isolated sentence or clause in the charge, and when all that was said upon that subject is considered I think the instruction is not subject to objection, and the same remark applies to the sixth ground assigned. Respecting the seventh criticism, I think what is said was not subject to objection and no request for further in-

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struction was made by the defendant. The eighth objection covers a portion of the charge distinctly intended to be in the interest of the defendant. The fact that an intelligent man, as the defendant is, undertaking to cheat these ignorant old pensioners would have been so bold and defiant as to have taken and appropriated to himself not merely a part, but almost the whole, of all that was coming to them was a circumstance which rendered the transaction somewhat unreasonable, and the attention of the jury was directed to this as a circumstance in the defendant's favor and to that extent against the reasonableness of the testimony of the pensioners. As the instruction does not misstate the facts and suggests no inference from it, except such as would be in the defendant's favor (as
34 it was designed to be), there is, in my opinion, nothing in this to which the defendant can except. The ninth objection to the charge is again to a part of the instructions in the interest of the defendant. It is not to be doubted that the jury properly understood that the court meant for them in considering the testimony of the pensioners who were witnesses to look to the fact that they were ignorant, and that their powers to correctly understand or communicate facts was somewhat limited, and that this was a minor matter is hardly to be doubted, because the facts about which they were testifying were of easy comprehension, and their liability to be mistaken or misunderstand the facts was very slight. With regard to the tenth error assigned, no request was made upon this point, and the failure to say more than was said I do not think a valid ground of objection. The eleventh and twelfth grounds urged are overruled, as, I think, the jury was warranted in finding as they have done. The argument of the defendant's eminent counsel apparently proceeds upon the general idea that the court is without the right to state and comment upon the evidence and mention the
35 testimony of some witnesses, unless all of the evidence is stated and the testimony of all the witnesses referred to. It is well settled otherwise, however, by many cases. Starr *v.* U. S., 153 U. S., 614; Haines *v.* McLaughlin, 135 U. S., 584; Simmons *v.* United States, 142 U. S., 148; California Ins. Co. *v.* U. S. Compress Co., 133 U. S., 387; Williams *v.* Conger, 125 U. S., 397; U. S. *v.* Phila. R. R. Co., 123 U. S., 113; Rucker *v.* Wheeler, 127 U. S., 85; Lovejoy *v.* U. S., 128 U. S., 171; Charter Oak Life Ins. Co. *v.* Rodel, 95 U. S., 232; Eastern Transportation Line *v.* Hope, 95 U. S., 297; Gaines *v.* Dunn, 14 Pet., 322; Tracey *v.* Swartwout, 10 Pet., 80; McLanahan *v.* Universal Ins. Co., 1st Pet., 170.

Any extended discussion of the evidence is not necessary for the purpose of this motion, if, indeed, it would be entirely proper to do so. In reply to the argument that the verdict is not supported by the evidence, it may be that, or two general observations may be made:

1. The proposition that these old colored men could have received more than $500, a sum quite unusual to men of their race and condition, and have concealed the fact from everybody that they had received more than fifty dollars, and promptly have stated
36 on all occasions and adhered to the statement that they had

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received only fifty dollars, or that they would have deliberately planned and carried out a scheme or conspiracy to do so as against the defendant, is utterly incredible in view of their well-known nature and habits of confidence in and communication with everybody in respect to themselves and whatever concerns them.

2. It is to be noticed that Mr. Humes, the defendant, and the testimony which supports him clearly tends to show that the whole of the Anderson check was paid early in October, say the 8th, if paid at all, as Mr. Humes says, and this was defendant's contention throughout. Now, if this was true and such was the state of facts when Mr. Finley and Mr. Laughlin called on Mr. Humes afterward, in the latter part of October, it is difficult, indeed, to understand why Mr. Humes in answer to their inquiries did not simply say that the whole of the amount coming to Anderson had been paid to him and state the facts. There then existed no accusation against him and no motive or occasion for being otherwise than
37 plain and direct about the matter. Mr. Humes does not deny the fact that they called on him and that he had a conversation with them, and Mr. Humes says, in substance, that Laughlin and Finley misunderstood him; that he told them there was due Anderson about five hundred and fifty dollars, and the question of whether it was all that was due him was not discussed. The question is, if the check for Anderson's pension had been previously paid to him on the 8th of October, why did Mr. Humes make any such reply to these gentlemen as he now says he made? Why did he not simply say that the amount of his pension had been paid to him or the check turned over to him in the early part of the same month? The transaction, as he gives it, was recent, only about twenty days previous, and it seems almost incredible that he should have gotten it or failed to refer to the fact of the amount or approximate amount of the pension, and that it had been paid to Anderson already. These points were pressed to the jury with great force by the Government's counsel, and it is not difficult to suppose
38 they made a deep impression. So the motion for a new trial is overruled. This is a case in which, under a recent act of Congress, the defendant may prosecute a writ of error to Supreme Court of the United States in view of the sentence which the court thinks it necessary and proper to give in such cases.

Claasen *v.* United States, 140 U. S., 200.
Hudson *v.* Parker, 156 U. S., 277.
See rule 36, 139 U. S., 706.

39 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States

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court-house, in the city of Memphis, in said district, on, to wit, the 6th day of January, A. D. 1896, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

This day came again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorneys, when the said defendant tendered to the court his bill of exceptions in this case; which said bill of exceptions, upon motion of the said defendant, by his attorneys, — ordered to be made a part of the record herein, and is accordingly duly signed, sealed, and allowed this day in open court.

40 *Bill of Exceptions.*

Filed January 6, 1896.

Circuit Court of the United States, Western District of Tennessee.

THE UNITED STATES
vs.
LOWRY W. HUMES. } No. 1982.

On the trial of this cause before his honor C. D. Clark, judge, &c., and a jury, the following was all the evidence-in-chief offered by the Government:

WILLIAM ANDERSON (colored), a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. What is your name?
A. William Anderson.
Q. Whereabouts do you live?
A. I live out the other side of Raleigh; just about north of Raleigh.
Q. On whose place do you live?
A. With Mr. Peter Finley.
Q. Do you know the defendant, Lowry W. Humes?
A. Yes, sir; I used to know him.
Q. Were you living at the same place you now live last fall—last October?
A. Yes, sir.
Q. Did you see Lowry W. Humes about that time?
A. Last fall? Yes, sir; I saw him.
Q. Did he have anything to do about getting any pension for you?
A. Yes, sir; he was the man that was doing the writing for me for a pension.
Q. Did he make the application to get the pension for you at first?
A. No, sir.

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41 Q. Who did you make the application to to get it for you?

A. Mr. Morrison Dedrick.

Q. Did they continue to stay here in Memphis or go away?

A. They went off.

Q. Who attended to it after they went off?

A. Mr. Humes.

Q. Do you know where his office was here in the city?

A. Yes, sir; I know where it was here in the city, but I don't know as I could go there, to the house he was living in. I don't know as I could go to it now.

Q. Well, did he ever give you any pension money?

A. Yes, sir; he gave me pension money.

Q. When?

A. Long in October.

Q. Of what year?

A. 1894, I think it was, sir.

Q. Last year?

A. Yes, sir.

Q. How came you to go there to get it?

A. Well, I had been carrying the papers to him and I went to him. When I went to him he told me to be there in a few days and he'd tell me what time to come, and I went there and it wasn't there. He'd tell me then to wait awhile longer, but he'd send for me; to keep count of the days and the time I went to him, and I couldn't do it, because I couldn't read and write and take account.

Q. Did anybody go with you?

A. Mr. Finley went with me—Mr. Pete Finley.

42 Q. Was that the man you were living with?

A. Yes, sir.

Q. Did you get any word from Mr. Humes to come there to his office?

A. Yes, sir; I did get it.

Q. What sort of way did you get it?

A. I got word.

Q. Did he write to you?

A. He didn't write to me.

Q. He did not write to you?

A. No, sir.

Q. Well, when you came in who came with you? You say Mr. Finley came with you?

A. Yes, sir.

Q. You went to Mr. Humes' office, and what did Mr. Humes say?

A. He said that the money hadn't come yet.

Q. What further did he say; anything about coming back?

A. He said, Come in a few days. I went there on a Saturday; he say, Come 'bout next week, 'long 'bout Monday or Tuesday; somewhere 'long there. He says, "Come in again; come in every once in awhile. I don't know what time it 'll be there." And I went there when he told me.

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Q. Did anybody come with you?

A. Mr. Pete Finley went *went* every time—every time I come to Memphis from home.

Q. How many times had he gone there with you before you got any money from the defendant?

A. He went—well, I couldn't keep count of the times now,
43 and I can tell you it was 'bout three times, I think, before I ever got the money.

Q. Tell the court and jury all about the times you came in and got the money. Who came with you that time?

A. When I got the money Mr. Peter Findley went with me.

Q. How did you come to town that day?

A. Come in a spring wagon—a buggy.

Q. Where did you go when you got to town?

A. Went to the wagon yard down here on Main street.

Q. Did Mr. Findley go with you from there to Mr. Humes' office?

A. No, sir; he didn't. He staid down there and sent me up to the office to see had my money come.

Q. Who did you see when you went up to Mr. Humes' office?

A. I saw Mr. Humes.

Q. Tell about it—what he said and what you said and what was done.

A. He told me to wait awhile, he was busy. When I got there he was writing, but there wasn't nobody there. Mr. Laughlin come with me, but he went right out, and I sat down; I felt poorly, anyhow. Said I, "I must be getting back; I'm feared Mr. Finley 'll leave me." He said, "Stop; wait till I go see if your mail ain't come."

44 Q. Who said that?

A. Mr. Humes.

Q. What was done then?

A. He went in there.

Q. Went in where?

A. In the other room.

Q. Did he have two rooms in his office?

A. Yes, sir.

Q. Go on and tell all about it.

A. He come back with $50 in his hand, and he says, "Here's $50; it's for you. Your mail is come. Here's $50." And he give me the money out of his hand, and I took it in my hand and put it in my pocket and went on down to the wagon yard; and I say, Mr. Finley, here's $50 Mr. Humes give me." And he said——

Q. You can't tell what you said to Mr. Finley or what he said to you. Tell what you did. You took it to the wagon yard?

A. Yes, sir.

Q. What did you do with the money when you got there?

A. Give it to Mr. Finley.

Q. Did Mr. Finley count it?

A. He took the money and came back up to Mr. Humes' office.

Q. Did you come with him?

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A. No, sir.

Q. Tell the jury again just what Mr. Humes said to you when he gave you the money. You were saying that he had two
45 offices there and told you to wait. Did you go in the other room with him?

A. No, sir; I didn't go in the other room; I sot there in the chair, and I seen him comin', and I got up and met him, and he said, "Here's $50 for you." And he says, "Here's $50 for you." And he say, In the next ten or fifteen days come back and it'd be the quarterin' time; that's the drawin'.

Q. The quarterly payment would be ten or fifteen days after that?

A. Yes, sir.

Q. Did he give you any check? I mean when he paid you the $50.

A. No, sir.

Q. Did he give any voucher for you to sign?

A. No, sir.

(Objected to by counsel for defendant as leading.)

The COURT: It is a little leading, but this old man moves up so slowly. I wish you would let him lead a little.

Mr. SIMONTON:

Q. Did he give you any papers that day?

A. No, sir.

Q. Did he give you to sign any paper at all that day?

A. No, sir; I never signed any that day.

Q. You said he told you to come back in about ten or fifteen days after he paid you the $50?

A. Yes, sir.

Q. Did he have any check for you to sign that day?

A. That day I got the money? No, sir; he didn't have any check.

Q. Nor any paper—voucher like that (showing paper)—
46 for you to sign? Did you sign any paper at all on that other day that you went back for your first quarterly payment?

A. No, sir; I never signed no check at all.

Q. Had you gotten a certificate of pension at that time?

A. No, sir; I hadn't got it.

Q. Have yot a certificate of pension now?

A. Yes, sir.

Q. Have you got it with you?

A. Yes, sir.

Q. Will you let me see it?

A. Yes, sir.

(The certificate was then handed to the district attorney.)

Q. Now, did Mr. Humes give you this paper on that day when he paid you the first pension money you have been talking about?

A. No, sir.

Q. On that day he paid you the first quarter?

GH POOR COPY

A. No, sir; give me that certificate the 4th of last month.

(The certificate was here offered in evidence by the district attorney; also a certified copy from the roll at Washington. No objection was offered to their introduction by counsel for defendant if the object was to show that the witness was a pensioner.)

Mr. SIMONTON: The date of this is September 10th, 1894.

The COURT: And he says he got it the 4th of last month, when it was handed to him by Mr. Humes?

A. Yes, sir.

Mr. SIMONTON:

Q. Do you know—can you fix the date now that you were in town here and got the money from Mr. Humes any better
47 than you have done? You say it was in October. Now, what day of the week or the month was it? Do you know?

A. No, sir; I don't know. If I had taken notice maybe I could have thought of the day. 'Bout as near as I could come at it, I think, it was on the 29th of October.

Q. You think it was on that day?

A. I think it was on that day.

Q. What did you do with that money—pay it out to anybody?

A. That money what I drawed? Well, I paid my debts with what I drawed and got something to eat with some of it.

Q. Did you get a receipt from anybody shortly after you got it from Mr. Humes?

A. No, sir.

Q. Did you owe Mr. Finley anything?

A. I owed him a little.

Q. What for?

A. Well, for money I had borrowed from him before that time come and on a cow.

Q. Did you pay him any money for that cow?

A. Yes, sir.

Q. When did you pay that to him?

A. I paid it to him the next day after I drawed the money.

Q. Did you get any receipt for it?

A. Yes, sir.

Q. Have you got that receipt?

A. Yes, sir.

Q. Well, let us have it.

(Witness hands him receipt.)

Q. Who is Mary Anderson?

A. That's my wife.

The COURT: Are you offering that to fix the date?

Mr. SIMONTON: Yes, sir; to fix the date.

48 (Objected to by counsel for defendant as irrelevant. Objection overruled by the court; to which counsel for defendant excepted.)

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Mr. SIMONTON:

Q. Did you pay that money yourself or who paid it for you?
A. Yes, sir; I give my wife the money to pay it. I wasn't able to go up to the house and pay it.
Q. And she brought this paper back?
A. Yes, sir.

(Objected to by counsel for defendant as incompetent. The court ruled the paper admissible only for the purpose of aiding the witness' memory in fixing the date; to which ruling counsel for defendant excepted. The paper was then read to the jury by the district attorney, it being dated October 30th, 1894.)

Mr. SIMONTON:

Q. Now, up to that day when Mr. Humes paid you the $50 had you been to Mr. Humes' office by yourself—had you come to town by yourself and gone to Mr. Humes' office?
A. No, sir.
Q. After you and Mr. Humes came here to see Mr. Humes about your pension did you come in from Raleigh by yourself?
A. No, sir; I didn't come by myself. Every time I come I come with Mr. Finley.
Q. And the first time you got any money was on the day you speak of his giving you $50?
A. Yes, sir.
49 Q. And that was the day before you gave your wife the money and she brought you that receipt?
A. Yes, sir.
Q. I show you this paper now (handing paper to witness). Can you read or write?
A. No, sir; I can't read nor write either.
Q. On the day that he paid you the $50 did you make your mark on the back of that paper on that day?
A. No, sir; I didn't.
Q. Well, did you make your mark to a paper like that on that day?
A. That same day I drawed that $50?
Q. Yes.
A. No, sir.
Q. Well, did you sign a paper like that on the day you went back there to draw your first quarterly payment?
A. Like which one—that check? No, sir.
Q. Well, did you sign a paper on that day like that one on your first quarterly payment?
A. Yes, sir; I signed one that day.
Q. The day you drew the first quarter, after you had gotten the $50—the first time you were back after getting the $50?
A. Yes, sir; I signed one after I drawed the first quarter.
Q. I am talking about the first time you drew your quarter's pay. You drew $50?
A. Yes, sir.

GH POOR COPY

Q. Then the next time you drew how much did you draw?
A. $36.
50 Q. At the time you drew your first $36 did you sign any papers at that time?
A. Yes, sir; I signed a paper like that (indicating a check).
Q. At that time did you sign a paper like that (handing another paper to witness)?
A. No, sir; I didn't.

Cross-examined by Col. GANTT:

Q. How old are you?
A. I don't know, sir, how old I am. I couldn't tell how old I was, because I don't know.
Q. You have no idea how old you are, have you?
A. No, sir; I don't have no idea. I'm somewhere 'long 'bout 75, I reckon.
Q. You live with Mr. Peter Finley?
A. Yes, sir.
Q. Does he live this side of Raleigh or the other side?
A. The other side—right north of Raleigh.
Q. About three miles from Raleigh?
A. Yes, sir.
Q. Do you farm?
A. Yes, sir.
Q. How much farm stock did you have last year? Did you plow more than one horse or mule?
A. Didn't plow but one horse; worked on shares.
Q. Did you work your own stock or get the stock from Mr. Finley?
A. Worked Mr. Finley's stock.
Q. More than one horse?
A. No, sir; didn't work but one horse in my part of it.
Q. In your part of the crop?
A. Yes, sir.
Q. Did any of your folks work land of Mr. Finley's besides what you worked?
A. Yes, sir.
51 Q. Well, how much was your part of the crop? How much land did you work?
A. I reckon we had 8 or 10 acres in cotton, and I reckon 'bout 7 or 8 in corn.
Q. Did you cultivate that yourself?
A. No, sir; my folks cultivated it.
Q. Your wife and children cultivated it?
A. Yes, sir; my wife and children.
Q. Did you cultivate any of it?
A. Oh, no, sir; I just knocked round.
Q. Looked after the stock?
A. No, sir; I wasn't able to do nothin'.
Q. Just knocked around?

BLEED THROUGH

A. Yes, sir; sot about in the field and make the little ones work.
Q. You bossed them?
A. Yes, sir.
Q. How often did you go to Raleigh?
A. I didn't go to Raleigh. Whenever I wanted anything from Raleigh I sent anybody to Raleigh to get it.
Q. You did not go to Raleigh at all?
A. No, sir.
Q. Were you not at Raleigh at all in the year 1894—last year?
A. No more than when I come through Raleigh I was there, though I didn't stop there.
Q. You did not stop there?
A. No, sir; only when I came through there.
Q. You never visited Raleigh for pleasure, just to take a day off?
A. No, sir; I never felt like undertaking that trip when I
52 wasn't able to go there—to walk there.
Q. I will see if I cannot refresh your recollection. Now, did you ever go there and take some drinks?
A. Oh, I didn't drink none 'thout I was sick.
Q. How long since you drank?
A. Well, I couldn't tell you. I- was such a little I never took notice of it.
Q. You did not drink any last year?
A. Not none to hurt nobody.
Q. Now, Mr. Anderson, there is a difference of opinion about hurting anybody. Well, you did drink some, didn't you?
A. I drink water and coffee and one thing an' another. I don't drink no whiskey.
Q. Nor beer?
A. No, sir.
Q. How did you come to town today?
A. I come with Mr. Pete Finley in his wagon or buggy.
Q. Did you ever come to town on the Raleigh cars?
A. We come on the car when we got to Raleigh.
Q. And you came in a wagon to Raleigh? That is 3 miles?
A. Yes, sir.
Q. And after you got to Raleigh you came the balance of the way on the cars?
A. Yes, sir.
Q. That is your general way of coming?
A. Yes, sir; that's the way we come most all of last year.
Q. You came in frequently, didn't you, on the cars?
53 A. No, sir; no more than when I come to see 'bout drawin' my pension.
Q. You were never in Memphis except for that purpose?
A. That's the only time I come. I didn't come to Raleigh any other way; didn't feel like takin' the air; was nearly dead anyway; looked to me like.
Q. And that was the reason you did not come to Raleigh or Memphis any more than you did?
A. I was sick. A sick man don't feel like goin' about tryin' to

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take the air without he is well and hearty, and then he can take it. He tries to shed all the air he can.

Q. To shun the air?

A. Yes, sir.

Q. How long does it take you to come from Mr. Finley's place to Raleigh?

A. I don't know, sir; never took no particular time; always come as quick as we could.

Q. Did you ever come by yourself?

A. No, sir; I never come by myself at all.

Q. To Raleigh?

A. No, sir.

Q. When you were brought to Raleigh, you say you always came in Mr. Finley's wagon?

A. Yes, sir.

Q. And did he remain and take you back?

A. Yes, sir.

Q. Always?

A. Yes, sir; yes, sir; all the time I come he took me back.

Q. Did you ever come all the way from his place up there to Memphis in his wagon?

54 A. From Raleigh to Memphis? Yes, sir; I come all the way with him in the wagon—all the way from his house to Raleigh.

Q. But I mean to Memphis. Did you come all the way from his place? Now, it is nine miles to Raleigh, and then three miles from there out to his place. Now, did you come all the way in the wagon, or did you come to Raleigh in the wagon and the balance of the way on the car?

A. Well, since I study a while, 'case I don't recollect acomin' in the wagon as I know of, although we have come one time in the wagon, but it slipped my memory but this time; but I know he always come with me when I come here to Memphis.

Q. And the way of doing it was, you would come to Raleigh in his wagon, and then you and he would take the car and come to Memphis?

A. Yes, sir.

Q. Where would you get off the car when you got to Memphis?

A. Get off at the wagon yard down here.

Q. How far is that from here?

A. Well, 'bout three-quarters of a mile, I reckon, or a mile. Well, it's a mile.

Q. Then how would you make the balance of the distance

55 from the wagon yard—would you walk it?

A. Oh, yes, sir; comin' on the street ain't like walkin' on the ground, an' muddy.

Q. A fellow can walk a heap further on the street than out in the woods or on the farm?

A. Yes, sir.

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Q. You came on the car and stopped at the wagon yard and wanted to come to Mr. Humes' office?

A. Yes, sir.

Q. Now, Mr. Humes' office was either here on Madison street or over on Court street?

A. I reckon it was.

Q. Well, it was about three-quarters of a mile from the wagon yard?

A. I reckon so, sir. I don't 'zactly know; near as I can come at it.

Q. Would not the car have brought you and put you off within fifty yards of his office?

A. I was talkin' to the attorney 'bout when we come.

Q. I am talking about the car bringing you within fifty yards of his office; and yet you say you got off at the wagon yard and walked three-quarters of a mile?

A. Well, I did.

Q. Did you get off at the wagon yard every time?

A. No, sir.

Q. Where did you get off?

A. Got off down the street here; down Main street.

Q. So you would be pretty close to Mr. Humes' office and the walk would be a pretty short one?

56 A. Mr. Humes' office, when I went there, was over on that next street.

Q. The car would come pretty close to his office, wouldn't it?

A. Yes, sir; I guess it would.

Q. Well, when you would come on the car, as near as the car would bring you to his office, who would come with you, any person in particular?

A. Come with me on the car?

Q. Yes; you have come to Raleigh and come to Memphis and concluded not to stop at the wagon yard and come three-quarters of a mile to Mr. Humes' office?

A. No; I was talkin' 'bout when Mr. Finley come with me and come with his mules with the wagon. I stopped the buggy at the wagon yard.

Q. Well, see if I remember you right, now. I understood you to say you hardly remembered ever to have come all the way through in the wagon from Mr. Finley's place last year?

A. That was the way you would come in the winter time, toward the first of the year.

Q. The winter of what year?

A. Winter of last year—last winter.

Q. I *at* you, did you come from his place to town in the wagon or buggy that you can remember; and, if so, how often?

A. I couldn't tell you how often. I tell you I was sick.

57 I can't remember how often, but I know I come, but I can't tell 'zactly how often.

Q. Well, did you most commonly come in the car?

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A. I come in the car a good many times, and then when it was wet an' rainy we'd come on the car.

Q. Well, now, you say that every time you went to Mr. Humes' office Mr. Finley was with you?

A. Every time except that time, the day that $50; he was down at the wagon yard, and he went up there after I went away.

Q. You don't know whether he went there or not? He told you he did, I suppose; you were not with him?

A. I wasn't with him.

Q. He was not with you on that occasion?

A. No, sir.

Q. He was not with you when you say you got the money?

A. No, sir.

Q. Mr. Laug-lin was not with you when you say you got the money?

A. He wasn't there when I got the money, but he was there when I got there, and I met him when he was comin' away in the room upstairs; I met him an' he come on away, an' I sot thar a little while an' I started, an' Mr. Humes told me to wait a while an' see if any mail hadn't come, an' he went in the other room opposite of me an' brought me the $50.

Q. Where was Mr. Laughlin then?

58 A. God knows; I don't.

Q. Was he at Mr. Humes' office then?

A. Yes, sir.

Q. So he was at Mr. Humes' office when you got the money?

A. I told you he wasn't there; I told you I met him; of course, I told you I met him an' he come away, an' I went there and sot down an' he give me the money.

Q. He had been there and you met him as he was coming away. Is that it?

A. Yes, sir.

Q. How far was he from Mr. Humes' office when you met him?

A. You know he couldn't have been far when I met him. He was goin' downstairs and I was goin' up; right at the gate; like that's the stairs yonder gwine out the door; he met me right at the edge of the door; where he went I can't tell.

Q. He was coming down and you were going up? Did you say anything to him—to Mr. Laughlin?

A. No, sir; I didn't say anything to him.

Q. You went on up, and at that very time you got your money?

A. Yes, sir.

Q. When did you see Mr. Laughlin after that again; do you remember? You don't recollect, do you?

A. I don't know whether I saw him or not, but I saw him in a few days, I think, afterwards; may have been the same day; I went on back down to the wagon yard and there I staid.

59 Q. You say Mr. Finley was not with you when you got the money and Mr. Laughlin was not with you. Now, what did you do with the money? Where did you put it?

A. Didn't I tell you I put the money in my pocket and had it

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in my hands and didn't take the money out of my hands? An' I say, "Here, Mr. Finley, here's some money Mr. Humes give me. Count it an' see if it ain't $50."

Q. Then what did you do with the money?

A. Kept the money right there. If I had took my hand out would have took the money out.

Q. Why did not you count it?

A. I did count it.

Q. Where did you count it?

A. I counted it as he give it to me. I counted by the bills. I just took it an' looked at it like openin' the leaf of a book. I knowed what sort o' bills they was.

Q. Can you count money?

A. Well, I can sometimes, when I ain't in trouble.

Q. You can't count it when you are in trouble?

A. Well, when I'm bothered, like I am now, you might give me money here to count an' I couldn't count it.

Q. You did count it at the office, though—before you left the office?

A. I counted it.

Q. Do I understand you rightly? Did you count it before you left the office, and then, when you got to the wagon yard,
60 you had it counted again? How did you come to town on that day; did you come in the car? Did Mr. Finley bring you to Raleigh, and then you come on the car?

A. No, sir. Didn't I tell you we come with the wagon to the wagon yard?

Q. Do you always count money when you get it?

A. Well, I pays out money, too. I didn't have no money, an' what little I had I wanted to keep it.

Q. So on that day you did come in the wagon? You recollect that now?

A. Yes, sir.

Q. Now, you say that you signed one of these papers—the large paper. If you are not too much bothered now, see if you can count that (handing some money to the witness). Look at those bills. Do you know what those bills are? Count that money and tell us how much there is.

(The witness here looked at the bills handed him and attempted to count them.)

Judge GREER: How much is there, Anderson?

The COURT: Can you count that or not?

A. I can't tell you 'zactly.

Judge GREER:

Q. The other was in bills, just like that?

A. Yes, sir.

Col. GANTT:

Q. See if you signed that paper (handing paper to witness). You

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say that you counted the other money at the office and it was in bills?

61 A. I don't know whether I signed this. I couldn't tell one paper from another. I signed a paper like this, but I couldn't tell whether I ever signed that one or not.

Q. Do I understand you correctly to say that you counted that money, that $50, at Mr. Humes' office? Am I right about that?

A. Mr. Humes took the money an' counted it, like my finger, so (indicating), and says, There is $50.

Q. Did you count it?

A. Well, I took his word for it. He told me what sort o' bills they was.

Q. And when you said here a while ago that you counted it you did not mean that you did?

A. Well, I thought you understood me. I thought I talked plain.

Q. I thought you said you counted it there, and then took it and got Mr. Finley to count it. Do you remember how many bills there were?

A. There was five.

Q. Were they new-looking bills?

A. Yes, sir.

Q. Five new-looking bills?

A. Yes, sir.

Q. And did you — right straight to the wagon yard?

A. Yes, sir; went as straight as I could down the street.

Q. What time of day was that?

A. Well, it was 'long about 12 or 1 o'clock; between 12 and 1.

Q. You said you could not tell whether you signed that paper or not?

62 A. I didn't sign any paper that day, I told you. I told you I signed a paper afterward there, when I drawed the first quarter. I signed a paper then for the next time.

Q. But you never did sign any paper at all there before you got that $50?

A. No, sir.

Q. You signed a paper afterwards. Now, was not the check made out like this? This is a check for $50, and on the back of this is the name of William Anderson, "his mark," and that is dated October 3d, 1894. Did not you make that mark on the back of that?

A. No, sir.

Q. That is witnessed by Mr. Humes and by Mr. Purcell. Now, did you not make that mark, and did not they witness it?

A. No, sir; I didn't.

Q. That check reads for $536.

A. Well, I never seen that check before I saw it up here in the court-house; never saw it before.

Q. Did not you sign it in the presence of those persons, make your mark on it?

A. No, sir; I didn't.

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Q. And, then, did you not take it in your hand, and did not Sanderlin go with you around to the Mechanics' savings bank, down here on the corner of Main and Madison?

A. No, sir; he never went with me in his life, nowhere. I don't know him.

Q. And did not you go with the paper and present it to
63 the cashier and say that you were William Anderson, and did not the cashier ask Sanderlin, who went round to identify you, if you were William Anderson, and did not he identify you?

A. No, sir.

Q. And then did not Mr. Humes pay you on the 8th day of October, or early in the month of October?

A. Pay me on the 8th?

Q. Yes, sir; Mr. Young Humes, the cashier. Did not he pay you $536 on that check?

A. No, sir. No, sir; I never seen any.

Q. You never went to the bank at all, did you?

A. No, sir.

Q. In going down the steps don't you remember to have met a colored woman who was after a pension herself, and that you had a piece of paper in your hand?

Mr. SIMONTON:

Q. What steps, Colonel?

Col. GANTT:

Q. Lowry Humes' steps. (To witness:) That you had the paper in your hand, and Sanderlin was with you and said, or you said, that you were going round to the bank to get the money?

A. No, sir; I don't recollect nothin' about it.

Q. Don't you recollect that this colored woman, seeing the check in your hand, laughed and asked if you were a married man?

A. No, sir; she never seed me; never seed me with no check in my hand since God made me—no woman. She didn't see me.

64 Q. What year did you go to live with Mr. Finley?

A. I don't know 'zactly what year. It's been 'bout gwine on four years ago.

Q. What year would four years ago be?

A. Well, most anybody could count back; they could tell 'bout that; 'bout '90, I reckon; the year of 1890, I reckon. This here is 1895.

Q. And if this is 1895, four years ago would make it 1890?

A. It'd be more than four.

Q. Make it five years, then?

A. Yes, sir.

Q. Do you know the months in the year?

A. Yes, sir.

Q. Name them, please.

A. June, July, and August, September, November.

Q. Well, that's pretty good. You strike things in the middle.

A. I said January and February. Now I can make it right:

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January, February, March, April, May, June, July, August, September, October, November, December.

Q. How many of them are there?

A. Twelve.

Q. After you got this money that you say you obtained from Mr. Humes, did you come to his office and get other money from him?

A. What you mean?

Q. After you got the fifty dollars, did you come to his office after that and get other pension money?

A. Yes, sir.

Q. How often?

A. I come whenever the time was to draw money. He give me the money in my hand.

65 Q. There are several checks made in the same way this other one was and marked and witnessed. You did not make your mark on any of them?

A. I didn't mark nare a one.

Q. So you did not go to the bank with any one?

A. No, sir; I didn't go to the bank.

Q. Who was it that wrote your application for the pension? Who made it out for you?

A. Well, I reckon, Mr. Humes did it when he was there.

Q. Don't you know that Mr. Deadrick did it?

A. He was the first man, I told you that, and after he went away, then Mr. Humes took his place.

Q. And these large papers, you say you signed one of them? You say you remember to have put your mark on these papers? Did you put your mark on more than one of these?

A. Yes, sir.

Q. And each time you put your mark on at Mr. Humes' office, did you?

A. Yes, sir.

Q. Do you know what you signed that paper for—those papers?

A. Yes, sir.

Q. What did you do that for?

A. Well, I signed it to draw money on it.

Q. After you had signed that paper it would be sent to Knoxville, wouldn't it?

A. Yes, sir.

Q. And about a week or ten days after that your check for the money would be due?

66 A. Yes, sir.

Q. And that check would be an order for money, and then when that check would come you would get your money, wouldn't you?

A. Yes, sir; I'd get it; I got it anyhow, but then he give it to me; I didn't go to the bank after it, but he give it to me out of his hand.

Q. When did you cease to go to Mr. Humes to get it? When did you quit? When was the last time you went to Mr. Humes and signed any voucher and it was sent up to Knoxville, and in about

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a week or soon afterwards your check came? When was the last time?

A. Let me see. I signed the last voucher that was sent up to Knoxville to get my money; I signed it at Mr. Humes' office.

Q. The last voucher?

A. Yes, sir.

Q. Well, about how long was that—two or three months?

A. No, sir; I told you just plain as I could it was the 4th of last month I signed it to go up to Knoxville.

Q. Well, that would be the 4th of November, wouldn't it?

A. Yes, sir.

Q. And the 4th of last month you went to Mr. Humes' office and signed one of these vouchers, and that voucher was sent up
67 to Knoxville, and then a week or so after that the check came, didn't it?

A. Yes, sir.

Q. How did you come to town on the 4th of last month?

A. I come with Mr. Finley's buggy.

Q. Was he with you at Mr. Humes' office?

A. Was he with me? Yes, sir; he was with me.

Q. He went with you to the office?

A. Yes, sir.

Q. That was on the 4th of last month?

A. No, sir; let me recovery back. It wasn't Mr. Finley; Mr. Finley was sick. His brother went with me.

Q. Now, that was when you signed the voucher, not when the check come? Did you go again to Mr. Humes' office to get the money?

A. Yes, sir; I went to Mr. Humes' office.

Q. And then you got the money on the check, did you? That was 8 or 10 days after the 4th of November?

A. Oh, yes, sir; I got the money. I got it on the check; but I tell you how I got it on the check: I trade down here with Mr. Polk & Spinning, and it was too late for me to go to the bank, and I went there and they cashed it for me.

Judge GREER:

Q. I just want to know the day of the week that you got the $50, as you say, from Mr. Humes.

The COURT: Was it on Monday or Saturday, or what day?

A. It was on a Monday, I think, sir, that I got the $50.

68 Q. You know the days of the week?

A. Yes, sir; it was on a Monday.

Q. Do you know how many days there are in a week?

A. Yes, sir.

Q. And it was a Monday evening that you got it?

A. Yes, sir.

Q. And it was the next day that you sent the money to pay for the cow?

A. Yes, sir.

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The COURT: I wish you would ask him whether when he got that $50 he knew there was more due him and why he did not say anything about it if he did.

Re-examined by Mr. SIMONTON:

Q. When you got your $50 did you know that was all the money that was coming to you or not in your first payment of pension money?

A. I thought it—I thought it was more comin' to me.

Q. Did you say anything to Mr. Humes about not getting enough, or anything of that sort?

A. Mr. Finley did it. He went up there.

Q. But was there anything that passed between you and Mr. Finley about not being enough money at the time you got the $50?

A. No, sir; I didn't say anything.

Q. What did Mr. Humes say?

A. He said that was what was 'lowed to old soldiers.

69 The COURT: And he says he told him that when his quarter fell due there would be some more. What I want to know is why he took $50 and said nothing and went away from there. It seems to me that needs clearing up.

Mr. SIMONTON: Did you know how much money was coming to you when you got your pension?

A. No, sir; I didn't.

Q. Did you have any certificate of pension? Did he give it to you then?

A. No, sir.

Q. Where was your mail going to at that time?

A. My mail was coming to Raleigh.

Q. Where was your pension mail coming to?

A. It come to his office.

Q. To Mr. Humes' office?

A. Yes, sir.

Q. Did he show you any paper at all at — time about your pension?

A. When I drawed the $50?

Q. Yes, sir.

A. No, sir.

Q. Did he say anything about whether there was any more or not, or whether he kept any?

A. No, sir; he didn't say whether there was any more, or whether I'd get any more or not, or anything 'bout it at all.

Q. What did he say about the quarterly payment?

A. He said in a few days come an' I'd draw some more money—$36—an' it wasn't more than ten or fifteen.

70 Q. At that time had Mr. Finley or his brother been with you to Mr. Humes' office every time that you went to get money?

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A. Yes, sir; Mr. George Finley went once and Mr. Peter Finley went every time but that.

Q. I understood you to say that the first time—the time that you got the $50—you did not sign any papers at all.

A. The $50? Well, I didn't.

Q. And the next time, when you got the first quarter, you signed one paper?

A. Yes, sir.

Q. That was a voucher, a long red paper?

A. Yes, sir.

The COURT: He says he never did sign any check.

A. No, sir; I never did sign any check.

Recross-examined by Judge GREER:

Q. Before you ever got any $50 at all you signed one of these papers? You made your mark on one of these papers before you ever got any $50 or anything—before you ever got any money? Did not you tell us awhile ago that before you ever got the $50—two or three weeks or a week before it—you went in there and signed one of those long papers?

A. Let me study. I don't recollect.

Q. You mean you made your mark on any paper at any time before you got the $50?

A. I never made my mark before the paper was sent up to Knoxville; never made no mark on none.

71 Q. You never have made your mark on any kind of paper?

A. Well, he never had no cause to make no mark.

Q. Did not you tell the jury awhile ago that you had signed a paper like that to go to Knoxville, and that you remembered that?

(Objected to by the district attorney as leading.)

Q. I so understood him and I want to be sure. I understood you to say, William, that before you got any $50 you came in here to Mr. Humes' office and you signed one of these papers that we call vouchers, but it has been described to you as a "long paper." Am I right or wrong about it? Did you say you had made your mark?

A. You must be right about that, signin' that paper.

The COURT:

Q. Do you mean by that that you did sign it?

A. Yes, sir; I did sign one before I got $50. I signed one paper.

Judge GREER:

Q. Now, how much money did you get each month?

A. $36.

Q. You get that every month?

POOR COPY

A. It comes to me every quarter—every three months.
Q. And you know that means $12 a month?
A. Yes, sir.
Q. And you know that was what was allowed you for your first payment, too, didn't you? You know that you were getting
72 some back money that was allowed you?
A. Yes, sir.
Q. And you know it was at that kind of a rate, didn't you?
A. Yes, sir.
Q. And you expected to get your back pension when you went in there and Mr. Humes gave you the $50?
A. Yes, sir.
Q. And you knew that you would get $36 four times a year?
A. Yes, sir.
Q. And you knew that this was for back pay?
A. Yes, sir.

Re-examined by Mr. SIMONTON:

Q. But you did not know how much you would get at that time when you got your first payment?
A. No, sir; I didn't know.
Q. What made you take your money to Mr. Finley and get him to count it?
A. Well, I told him to be certain because, you know, he may have thought—well, I don't know. I been workin' there with him an' I wanted him to see what I got at the first time; that's the reason I showed it to him; nothin' out the way 'bout that. I thought I'd show it to him; that I never stopped nowhar to spend none of it.
Q. Did you know your pension had been allowed when you got that $50?
73 A. Yes, sir.
Q. Did you know it before that time?
A. Yes, sir; I knowed.
Q. Who told you?
A. Why, I was told that when I was mustered out.
Q. You don't understand. You made an application to Mr. Deadrick to get a pension?
A. Yes, sir.
Q. You did not get that right away?
A. No, sir.
Q. Did you know when you went to Mr. Humes' to get the $50 that it had been allowed?
A. Yes, sir.
Q. How did you know?
A. Well, Mr. Humes told me himself he expected I'd get $300 or $400.
Q. When did Mr. Humes tell you that?
A. It was the first time I begin goin' to him. He said, "You'll get a right smart when you begin to draw."

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PETER FINLEY, a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. Your name is Peter Finley?
A. Yes, sir.
Q. Tell the jury where you live.
A. I live four miles north of Raleigh.
Q. That is in Shelby county, is it, in this State?
A. Yes, sir.
74 Q. Do you know a pensioner here named William Anderson?
A. Yes, sir.
Q. Where does he live?
A. He lives on my place.
Q. How long has he been living there?
A. About four years.
Q. Were you in the city here with him at any time last fall?
A. Yes, sir; I was in the city with him three times during the month of October, last fall.
Q. Did you see Mr. Humes on these visits to town—the defendant, Lowry W. Humes?
A. Yes, sir.
Q. Tell the jury what occurred between you and Mr. Humes or between Mr. Humes and William Anderson on those three different visits.
A. Well, I went to Mr. Humes' office with Uncle William Anderson the first time he came in, and he told William that his papers hadn't come yet; he was looking for them any day, and insisted that he should come back in two or three days or, at least, that week, anyhow.
Q. Could you identify what time in October that was?
A. I can't the date, but I can the day of the week.
Q. What was the day of the week?
A. It was on Tuesday.
75 Q. Tell as near as you can what time in October.
A. Well, somewhere along about the first of October; perhaps the 10th or 12th, or somewhere along there; I can't tell exactly; I remember, though, the day was Tuesday; and so the old man did come; I brought him in again.
Q. Do you know what occurred in the office that day?
A. Well, he told him his papers hadn't come, and he thought they would be there in a few days.
Q. How came you to go there that day?
A. The old man had received a note from Mr. Humes, telling him to come in and see him about some papers.
Q. What kind of notice did he receive?
A. Just a note saying come in.
Q. Do you know what became of that note?
A. It just said, "Come in and see me about some papers." It was very short; it got misplaced.
Q. Do you know what the date was?

GH POOR COPY

A. That was dated in October some time; I don't remember the date of it.

Q. You say Mr. Humes told him his papers had not come, but to come back when?

A. In a few days—that week.

Q. Did he come back?

A. Yes, sir; we come back the Saturday.

Q. What was the result Saturday?

76 A. Well, he told him Saturday that he was sorry he put him to the trouble of coming back there; his papers had not come yet; that he would let him know when they come; would send him a notice out to Raleigh.

Q. That is twice?

A. Yes, sir.

Q. How long before you came back there the third time?

A. Well, it was somewhere between two and three weeks; I don't remember just exactly.

Q. I wish you would state to the jury and the court about that visit. Let me ask you first, in the meantime, did Anderson come to town himself between those two visits you have spoken of and the third visit, which you are going to talk about now?

A. Not to my knowledge; he didn't.

Q. Did he have any way of getting here without your knowing?

A. Well, no, sir; he had no conveyance of his own, and at that time he had no money to pay his fare, I don't think.

Q. What was his condition of health and physical strength?

A. Well, he was in very feeble health; had the rheumatism in his feet and his ankles were swollen up.

Q. Then on his third visit, how did he come to town?

A. Well, I brought him on the third visit.

Q. Where did you come to?

77 A. I stopped at the wagon yard, down here on Main street, somewhere near Exchange, and I left the old darkey there, and told him when he got through at the office of Mr. Humes to come back there to the office at the wagon yard and we would go out home that evening.

Q. On that occasion did you go with him to Mr. Humes' office?

A. I didn't go with him that day to Humes' office.

Q. What did he have with him when you next saw him?

A. He had $50 in money.

Q. Did he show it to you?

A. Yes, sir.

Q. How long after you first saw him after he went back there did he show it to you?

A. Right immediately; as soon as I walked in he carried me round to one side.

Q. Did you count the money?

A. Yes, sir.

Q. How much was there?

A. There was $50.

Q. What did you do then?

BLEED THROUGH

A. I went down to Mr. Laughlin's office.

Q. How came you to go to Laughlin's office?

A. Well, to get him to go down to see Mr. Humes with me.

Q. Why were you going down to see Mr. Humes?

A. Well, the old man complained that he thought he had not been dealt with fair, and asked me if I would investigate and see about it.

Q. Who is Mr. Laughlin?

A. Well, he is an attorney-at-law. He had an office on Madison street.

78 Q. You had known him before?

A. Oh, yes; he was raised out there at Raleigh.

Q. Had you ever spoken to him about this matter before?

A. Oh, yes, sir, and he had went to see Mr. Humes about it a few times himself.

Q. Was that before the pension was allowed?

A. Yes, sir.

Q. Did he have any connection with it at all? He was not a pension attorney—just a lawyer?

A. Yes, sir.

Q. When you got to his office what did you do then—when you got to Mr. Laughlin's office?

A. Well, I related the circumstances to him.

Q. After that was done what did you do?

A. I asked him to go down to Mr. Humes' office with me.

Q. Did he go?

A. Yes, sir.

Q. State to the court all the conversation that took place as it occurred.

A. After we got down there Mr. Laughlin told Mr. Humes, "I see you paid the old man some money." He said, "Yes, sir; his money come in today's mail." He asked him something about the amount and he said the old man was allowed $60 and he retained $10 and paid the old man $50, and went on to explain that the old man's pension was allowed under the new law and was not

79 so much as it would be under the old law, and was $12 a month. That was about all that was said, I believe.

Q. He said the money had come that day?

A. Yes, sir.

Q. And that it was $60, but he retained $10?

A. He had retained $10 for his fee, which the law allowed him, and paid the old man $50.

Q. What explanation did he give about the $50?

A. Well, that it was granted under the new law; that it was not so much under the old law.

Q. Did he say anything about the old man getting a check for $500 or anything of that sort?

A. No, sir.

Q. What did he say about his future payments—what they would be?

A. Said it would be $36 a quarter.

POOR COPY

Q. Was anything said about his coming back for that quarter's money?

A. Yes, sir; he said on the 15th of November, the next month, the first quarter would be due.

Q. Did Anderson come in for that quarter, do you know?

A. Yes, sir; I came in with him.

Q. Were any papers signed at that time?

A. No, sir.

Q. Well, did Anderson get his money?

A. Yes, sir.

Q. Where did he get it from?

A. Mr. Humes paid it to him.

Q. Where?

A. In his office.

Q. Now, you say on that occasion that you came in there
80 and made inquiry about the $50. That was on Monday?

A. No, sir; it was on Tuesday.

Q. The first time you were in there was on Tuesday, the next time Saturday, but you cannot give the exact days of the month, but it was October some time?

A. Yes, sir.

Q. Well, the third time was when?

A. That was on a Monday.

Q. Can you fix that date?

A. Yes, sir; I can fix that date. It was the 29th of October.

Q. Is there any way that you fix it in your mind?

A. Yes, sir.

Q. Tell how that is.

A. Well, on the next day after the old man received his money he owed my father $15 for a cow and calf, and the next morning, after we came from Memphis that day, he paid the old man for his cow and calf. He gave the old man a receipt, which was dated on the 30th of October, which was the day after we went to Memphis. That is all I remember.

Q. Now, as I understand you, you were there three times in October?

A. Yes, sir.

Q. You say the first time was on Tuesday. How do you fix that?

A. Well, the old man received this notice from Mr. Humes on a Saturday evening, and on Monday was very anxious to come
81 to town, and was after me to get some conveyance to bring him in. I told him to hold on; I would bring him in some time that week, but on Monday evening his stepdaughter came in and brought him some more notice about his money being here, and he became very anxious and insisted I should furnish him a conveyance or come in with him, and I came in with him. I had some business of my own to attend to.

BLEED THROUGH

Cross-examined by Judge GREER:

Q. Mr. Finley, you say he owed $15 to your father for a cow and calf and paid him the day after he got his money?

A. Yes, sir.

Q. I suppose from your testifying about it that it was something you knew yourself?

A. Yes, sir.

Q. You saw him pay your father?

A. Yes, sir.

Q. Where does your father live?

A. My father lives with me altogether. My mother has been dead several years and he just lives with me.

Q. What is your father's name?

A. Ansell Finley.

Q. The old man pulled out the $15 and handed it to your father?

A. Well, of course, he owed him for the cow.

82 Q. He owed him for a cow and pulled out the $15 and counted it out to him?

A. He did not count it out. When he give me his money down at the wagon yard he asked me to count it and carry it home for him, and I did and he told me to keep it till the next morning and he or his wife, one, would come and settle with my father for the cow.

Q. And he came up?

A. Well, his wife came, I believe.

Q. So you already had the money?

A. Yes, sir; but it wasn't coming to me—the cow money.

Q. What sort of money was it you had?

A. Ten-dollar bills.

Q. And you kept out $15?

A. Well, I had all of his money.

Q. What did you do with the other $35?

A. Well, I made the change with the old gentleman that morning and paid him the $15, and then his wife got $15 to come to town with.

Q. You kept the rest yourself?

A. Yes, sir.

Q. He did not keep the money himself, then?

A. No, sir.

Q. Did he ask you to keep it?

A. He asked me to carry it out home for him.

Q. You took it and kept it?

A. Yes, sir.

Q. The next morning he was over at the house?

83 A. Well, I don't remember whether he was or not, but I remember his wife was.

Q. You were a witness in this case before?

A. Yes, sir.

Q. You testified before?

A. Before?

GH POOR COPY

Q. Before the jury, week before last.
A. Yes, sir.
Q. Did you make any statement to that jury about that cow?
A. No, sir.
Q. None at all? Did you not state to that jury that you did not know the date when the old man came in town and went to the wagon yard and you counted his money, but it was somewhere between the 20th and the 30th of October?
A. Yes, sir; I stated it was between the 20th and the 30th of October.
Q. Did you not state on that examination that it was between the 10th and the 20th, and said that several times, and then corrected it and said between the 20th and the 30th?
A. Well, I was meaning about the first two visits I made. They were somewhere between the 10th and the 20th of October.
Q. You told the jury nothing about this cow transaction on the former trial?
A. No, sir.
84 Q. Well, Mr. Finley, you knew just as much then as you do now about it?
A. Well, it slipped my memory at that time; but in looking over the old man's papers the other day I found the receipt.
Q. You mean by "the old man" Anderson?
A. Yes, sir.
Q. So you and the old man have been talking about it?
A. I was down there looking over his papers.
Q. Over Anderson's papers?
A. Yes, sir.
Q. And talking about his testimony in this case and about your testimony?
A. Yes, sir.
Q. And you just ran across this receipt?
A. Yes, sir.
Q. Mr. Finley, you don't mean to tell the jury that you had forgotten all about that cow transaction?
A. Yes, sir; I had forgotten about it till I come across that receipt.
Q. You did not remember that your father had sold him a cow a little over a year ago, and that you took the money out of his pension money?
A. Well, he had sold him the cow nearly two years before he paid him.
Q. You had forgotten all about the fact that you had held out $15?
A. Yes; I had forgotten all about keeping out $15.
85 Q. And yet you remember now that it was on a Tuesday and a Saturday?
A. Yes, sir.
Q. And that it was on a Monday when you came the last time?
A. Yes, sir.
Q. You remember the days of the week?

BLEED THROUGH

A. Yes, sir.
Q. And could you remember the collection of the $15?
A. Well, no, sir; I didn't remember that.
Q. Can Anderson count?
A. You mean money?
Q. Yes.
A. No, sir; he can't count money correctly.
Q. He is a tenant of yours on your place?
A. Yes, sir.
Q. How long has he been living there, Mr. Finley?
A. It will be four years this coming January—next January.
Q. So he came there in 1892?
A. Yes, sir.
Q. Mr. Finley, you did not know the amount of money that he was going to get, did you?
A. No, sir.
Q. You say now before the jury that the old man was somewhat complaining. Did not you say before, when I asked you the question as to why you did not think the $50 was enough, that you just guessed it—when you testified before a jury in this same case?
86 A. Well, you asked me why I thought it would be more.
Q. Did not you answer to my question that you guessed it might be more?
A. Well, that's all I had to go by—just merely guesswork—supposing and guessing at it.
Q. When did the old man make any complaint to you, Mr. Finley?
A. Well, at the wagon yard.
Q. Well, when I asked you before why, why didn't you tell the jury that he had complained? Did you ever tell that other jury that old man Anderson had made any complaint to you about the amount of money?
A. I don't know that I did.
Q. Don't you know that you were asked why you went to see Mr. Humes at all, and you said that you just guessed that there might be more money coming and went?
A. I believe that is the way I said.
Q. What complaint did he make?
A. Said he didn't believe it was right; thought there must be something wrong about it.
Q. Why did he think there was something wrong about it?
A. He was expecting more money.
87 —. Did you know what money he had a right to expect?
A. No, sir; and he didn't, either, I don't suppose. I had no idea what amount of money, and he had not, either.
Q. Well, then, if you had no idea, you did not personally know any reason for going to see Mr. Humes, did you?
A. Well——
Q. Mr. Finley, isn't it a fact that you employed a lawyer?

Mr. SIMONTON: Let him answer the other question.

POOR COPY

Judge GREER: Well, let him answer. I am perfectly willing.

A. Well, of course, Judge, I had no reason to believe that it was any more, and I made no complaint myself.

Q. And yet you had employed a lawyer, had you not, about this very business?

A. Well, the old man had requested me about six or eight months before this to see some lawyer—that he knew no one—and see if they could hurry the matter up.

Q. And you employed Mr. Laughlin. Did you testify that before the other jury?

A. Well, at the old man's request. He knew no one, and
88 asked if I would speak to some one.

Q. That was before any pension had been allowed to him?

A. Yes, sir; before he got any money.

Q. You got Mr. Laug-lin to go around to see Mr. Humes about the pension?

A. Yes, sir; he went round.

Q. That had been six or eight months before?

A. I think it was in the winter or spring before he got the money.

Q. Did you state on the former trial of this case, in this court-room, before the other jury, that the time that you counted the money of William Anderson at the wagon yard was between the 10th and the 20th day of October, 1894?

A. No, sir; I didn't state that.

Q. Did not you state at another time in your examination as a witness that this counting of the money by you took place between the 20th and the 30th of October?

A. Yes, sir; I stated that.

Q. You did not state first and you did state the last?

A. Yes, sir.

Q. You spoke of employing Mr. Laughlin. You agreed to pay him a fee, Mr. Finley?

A. Well, of course, he expected something for his trouble.

Q. You did pay him a fee?

A. Well, yes, sir; I gave him a little.

89 Q. You advanced the money to pay him the fee?

A. I advanced the money—no, sir.

Q. Was the money paid by William Anderson?

A. Well, I paid him out of William Anderson's money that he give me at the wagon yard. As I stated, I kept the money until the next day.

Q. Did you keep the money out to pay Mr. Laughlin? How much did you pay Mr. Laughlin?

A. Well, I give him $5.

Q. You have taken a great deal of interest in the matter, have you not, Mr. Finley?

A. Well, I don't know that I have taken any more than I ought to, after the old man requested me to.

BLEED THROUGH

Q. And you have taken a great deal of interest in the case?
A. Well, I had some interest in the old nigger. I had known him ever since I was a very small boy.
Q. And you have had a good deal of feeling in this case, too, haven't you?
A. Well, I don't know that I have.
Q. Did you state anything to the jury before about having employed Mr. Laughlin and paying him this fee out of Anderson's money?
A. No, sir; I don't think I did.

Re-examined by Mr. SIMONTON:

90 Q. Mr. Finley, counsel have asked you now why you did not tell about this cow transaction before. I want to ask you if you were asked anything about it?
A. No, sir.
Q. Was your attention called to it in any way by any one?
A. No, sir.
Q. You were further asked if you testified before about Anderson's telling you at the wagon yard that he had not gotten enough money. Now, I want to ask you whether the fact is that you were not permitted to tell the facts there, on the objection of my friends here, the defendant's lawyers, about what Anderson did tell you at the wagon yard. The- objected to your stating it?
A. Yes, sir.
Q. Those questions you were not permitted to state before?
A. No, sir.

Recross-examined by Judge GREER:

Q. Mr. Finley, let me refresh your memory. When you were called in rebuttal—that is, put on the witness stand the second time—it was then that you were asked, was it not?
A. Yes, sir.
Q. Why you thought there ought to be more money?
A. Yes, sir.

91 Q. Was there any effor*d* made on your part at that time to explain that it was because Anderson had thought he was not treated right?
A. Well, I did not understand your question at that time, Judge, was the reason I answered that way.
Q. Then, how did you come to answer it that you had no reason, but just guessed it?
A. Well, you were asking me what grounds—what right I had to suppose there was any more.
Q. And you answered that question by saying, "I don't know; I just guessed it," did you not?
A. I just supposed; yes, sir.
Q. And you did not offer to state that William Anderson had said anything to you about it?
A. No, sir; I didn't state that.

POOR COPY

Q. I omitted a question just now.

The COURT: Ask it.

Judge GREER:

Q. Mr. Finley, when you came in that morning—I allude to the day that you counted the $50—you and Anderson got here early in the morning, did you not?

A. It was between 10 and 11 o'clock, I think, when we got to the town.

Q. And it was about 3 o'clock when you met him at the wagon yard?

A. Between 2 and 3 o'clock.

Q. You got here between 10 and 11 in the morning, and you saw him start on off to Mr. Humes' office, and then you did not
92 see him any more until between 2 and 3 o'clock, at the wagon yard. That is correct, is it not?

A. Yes, sir.

Q. Where the old man had been in the meantime or what he had done you, of your personal knowledge, do not know?

A. No, sir.

Re-examined by Mr. SIMONTON:

Q. Are you definite about the time of day that you came to the city and the time that you saw him in the afternoon?

A. Well, not very definite; only, as well as I remember, it was between 10 and 11 when we came it.

Q. That is your recollection about it now?

A. Yes, sir.

Q. You were asked just now by counsel why you did not give this explanation which you now give; why you stated that you just guessed so. I wan't to ask if you remember the connection in which the question was asked you; to what your attention had been directed just before. Had there been any allusion to any conversation between you and Anderson?

A. Not that I remember.

Q. Do you remember whether or not the questions just before that had been what you knew about the pension matters yourself and knew what he ought to have received yourself?

(Objected to by counsel for defendant as leading. Objection sustained by the court.)

93 Q. Do you remember what line of inquiry just preceded the question which the- put to you as to why you knew or did not know how much pension money he would receive?

A. Well, no, sir. I believe I don't remember just how that was.

H. W. LAUGHLIN, a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. Tell the jury your name.

A. H. W. Laughlin.

BLEED THROUGH

Q. Where do you reside?
A. I reside at Raleigh, Tenn.
Q. Have you an office here, and where is your office?
A. I have; at 43½ Madison street.
Q. Your profession is what?
A. I am a lawyer.
Q. Do you know William Anderson and Peter Finley?
A. Yes, sir.
Q. How long have you known them?
A. Well, I have known William Anderson, perhaps, something over a year, and I have known Peter Finley nearly all my life.
Q. You know the defendant, Lowry W. Humes?
A. Yes, sir.
Q. Well, were you at Mr. Humes' office at any time last fall—in October—in company with Mr. Finley?
A. Well, I was there about a year ago or—perhaps, I should say last fall; whether it was October or November I could not be positive, but one of those months—along there.
94 Q. How came you to go there?
A. I went there at the solicitation of Mr. Finley for the purpose of finding out from Mr. Humes the particulars as to the payment of the pension money to William Anderson.
Q. Had you been to Mr. Humes' office that same day previous to that time?
A. I could not be positive that I had. I may have done so. I might have gone there for the purpose of telling him that they were coming in. I have no positive recollection as to that.
Q. Did you know they were coming in?
A. I could not be positive now that I did know they were coming in on that particular day. My impression is, though, that I did -now it.
Q. I wish you would state now what occurred when you went down there, and did Mr. Finley go with you?
A. Mr. Finley went with me; yes, sir.
Q. What occurred when you got down to Mr. Humes' office?
A. Well, I went, as I say, at Mr. Finley's solicitation, to Mr. Humes' office, and there asked him for an explanation of the amount paid Anderson and for information generally about his pension. I believe that I did the talking myself, or did the most of it. I believe I commenced the conversation by saying,
95 "I see you have paid the old negro $50." He said, Yes; that his pension money had come that morning in the morning's mail, $60, $10 of which had been retained by him as an attorney's fee, and the balance, $50, he paid over to William Anderson. I asked him further as to the evidence that William Anderson had about his pension or of his pension, and he stated that his books would be the evidence that the pension had been granted him.
Q. What was it you asked him about that?
A. What evidence William Anderson had that the pension had been granted him. He stated that his books would be the evidence that his pension had been granted. Finley and William Anderson

H POOR COPY

were under the impression that if any pension had been granted at all—I will say William Anderson—I, perhaps, should say that Mr. Finley knew that if any pension had been granted at all it should have been commenced with a large amount.

Q. The first payment?

A. Yes, sir; and we asked Mr. Humes about that, and he said the reason why it was as small as $60 was because this pension—

96 William Anderson's pension—had been granted under the new law, and that the Government had quit allowing large amounts in commencing pensions with. That is the substance of the conversation, as I remember it.

Q. Was anything said about his pension check?

A. No, sir.

Q. Was anything said about his having gone to the bank and gotten the money for himself?

A. No, sir.

Q. Was anything said about the amount that he was entitled to being $400 or $500?

A. No, sir.

Q. But he explained to you how it was only $50 or $60?

A. Yes, sir; that was his explanation.

Q. Do you remember what day of the week that was?

A. No, sir; I have no recollection at all as to the day of the week, or of the month, either.

Cross-examined by Judge GREER:

Q. Mr. Laug-lin, you had been employed before that as attorney about this matter?

A. Yes, sir.

Q. Mr. Finley was the person who employed you?

A. Yes, sir.

Q. You know William Anderson very well?

A. Well, I did not know William Anderson at the time that he employed me.

Q. But you knew that it was about William Anderson's business?

A. Oh, yes, sir.

Q. You had seen William Anderson before that time?

97 A. Yes, sir; I had seen William.

Q. You had seen him often?

A. I think I could say I had seen him several times. I think I saw him, perhaps, once or twice coming in on the car with Mr. Finley.

Q. You have an impression on your mind that you expected them in that morning?

A. Yes, sir.

Q. And you had been around to Mr. Humes' office?

A. That is my impression.

Q. Why would you be around at Mr. Humes' office that morning?

BLEED THROUGH

A. Well, merely to tell him if I did go. I don't know that I did go.

Q. If you had met William Anderson——

A. I have no recollection that I did meet him.

Q. If you had met him while you were around there telling Mr. Humes about their coming and he was your client, you would have gone back with him, would you not?

A. Well, I expect I would.

Q. The conversation you had in Mr. Humes' office was a very brief conversation?

A. Well, yes; I believe it lasted only a few minutes.

Q. So brief, I believe you testified, that you did not sit down in the office?

A. Yes, sir.

Q. You were there only a few minutes?

A. Yes, sir.

98 Q. You remember that you were discussing the difference between the new and old pension laws; that was a part of the conversation?

A. Yes, sir. He told me the pension had been granted under the new pension law.

Q. And that did not allow as much as the old pension law?

A. Yes, sir; so Mr. Humes told me.

Q. Was anything said there by Mr. Humes to the effect that this was all the money that he got? Was it not simply your introducing the question, "I see that you paid the old man $50"?

A. Yes, sir; that is my recollection, that I commenced the conversation.

Q. Was anything said by Humes to the effect that this was all the money the old man had?

A. I don't think he used the word at all.

Q. That day did you see Anderson at Mr. Humes' office?

A. I say I do not remember his using the word "all." He said his money had come that morning in the mail.

Q. And you remarked, "I see you have given the old man $50"?

A. Yes, sir.

Q. Had you seen the old man, Anderson, that day at all?

A. I have no recollection of it; I do not remember to have seen him.

Q. Who paid the $5? Mr. Finley?

A. Mr. Finley.

99 Q. You were ready to receive the fee as early as you could get it and told them it had been received?

A. Yes, sir.

Q. It was paid you by Mr. Finley. Did you execute any receipt to him?

A. I don't think I did; no, sir.

Q. Mr. Laughlin, about the retaining of $10 as an attorney's fee, it is not a clear memory to you that he said he retained it or that he said it was retained?

H POOR COPY

A. Well, I won't say that he said he retained it as "my attorney's fee."

Q. Whether Humes was the attorney or somebody else was the attorney you would not undertake to state?

A. No; I would not undertake to state that.

Q. Have you been requested to make any statement about this case before you were subpœnaed as a witness?

A. Yes, sir. I was called upon by a pension agent or examiner or inspector or whatever his official position may be. It was by Mr. Ragsdale.

Q. The gentleman sitting here—Mr. Ragsdale?

A. Yes, sir.

Q. He called upon you and got you to make a statement in writing?

A. No; he did not take my statement in writing.

Q. And you were not sworn at that time?

100 A. No, sir.

Q. Mr. Laughlin, I note that I asked you before and will ask you again, you did not go into any details with Mr. Humes about the exact details of this pension or about the cashing of the check?

A. No, sir; nothing was said about any check at all.

Q. You did not ask him anything about these vouchers?

A. No, sir.

Q. Though you are a lawyer, you have not prosecuted any pension claims?

A. No, sir; I never have.

Q. And there was no discussion by you about when his vouchers should be sent on or when his checks should arrive?

A. No, sir.

Q. Or whether any had arrived?

A. No, sir.

Re-examined by Mr. SIMONTON:

Q. You say there was no discussion about that, but you did ask what papers the old man had to show that he was a pensioner?

A. Yes, sir; to show that he had a pension granted, and he remarked that "My books will show that."

A. FINLEY, a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. What is your name?

A. A. Finley.

101 Q. Are you any relation to Peter Finley?

A. I am his father, sir.

Q. Where do you live?

A. I live four miles north of Raleigh.

Q. You and Peter Finley live together?

A. Yes, sir; both together.

BLEED THROUGH

Q. Do you know William Anderson?
A. Yes, sir.
Q. Do you know anything about what was his condition of health last October and last fall?
A. Yes, sir.
Q. Well, what was it? State whether he was hearty and strong and robust or otherwise.
A. Well, sir, he was in very bad health at that time, hardly — to get about at all; in fact, he was under the doctor part of the time.
Q. Do you know of his coming to the city of Memphis in October at any time?
A. Yes, sir.
Col. GANTT: Mr. Finley, don't answer unless you came with him.
A. Well, I didn't come with him. My son came with him.

Mr. SIMONTON:

Q. Do you know of his coming to Memphis at any time in October by himself?
A. No, sir; I do not.
Q. Do you know whether he was in a condition to have come to the city by himself at that time or not?

(Objected to by counsel for defendant as matter of opinion
102 of the witness.)

The COURT: He may ask him the question if he was physically able to take the trip.

Mr. SIMONTON:

Q. Was he physically able to have made the trip to Memphis at that time alone?
A. I don't think he was able at that time.

The COURT: You had better let him state what his condition was.

Mr. SIMONTON:

Q. Do you know whether he had any money or any conveyance of his own?
A. Well, he told me he had not.
Q. Do you know whether he had any conveyance or horse?
A. He had no horse and no conveyance at all.
Q. Did he have any money that you know of?
A. None that I know of.
Q. Was he owing you anything at that time?
A. Yes, sir; he was owing me for a cow and calf.
Q. He had not paid you, then?
A. No, sir; he had not paid me.
Q. Were you paid finally?
A. Yes, sir; he paid me.
Q. Do you know whether or not when you were paid he had been to the city of Memphis recently before that time?

H POOR COPY

A. He had been there the day before he paid me; had been there on the 29th and paid me on the 30th.

Q. Did you write a receipt?

A. Yes, sir.

103 Q. Can you see that (handing paper to witness)?

A. That is my handwriting, sir.

Q. Is that the receipt you gave him?

A. Yes, sir.

The COURT: Now, you object to so much of his statement as says the witness was not able to come?

Judge GREER: Yes, sir.

The COURT: Well, I will exclude that and sustain the objection. You may look to the circumstances.

Mr. SIMONTON: The testimony as to what his physical condition was remains in?

The COURT: Yes, sir.

Cross-examined by Judge GREER:

Q. William Anderson was renting from your son?

A. Yes, sir.

Q. He was renting from your son and raised a crop there?

A. Yes, sir. He and my son were working together on my plantation, but he was working with me. I had lost all my family and I gave up the management of the place to my son; he was renting to William Anderson.

Q. William Anderson worked on shares?

A. Yes, sir; a share crop.

Q. He raised a crop of cotton and corn that year?

A. Yes, sir.

Q. A pretty good crop, too, wasn't it?

104 A. Yes, sir; pretty fair.

Q. He had about ten acres in cotton?

A. Something about that.

Q. How much corn?

A. I think probably about five acres in corn.

Q. Ten in cotton and five in corn?

A. Yes, sir.

Q. Well, the crop was all laid by—all that you are talking about?

A. Yes, sir. They were picking cotton at that time.

Q. The old man had gotten over the farm plowing?

A. No, sir; he was not able to plow.

Q. A hoe hand, wasn't he?

A. Yes, sir. I think he hoed a little through the crop season. At this time they were picking cotton.

Q. If he came to town three times nobody had to help him walk anywhere, did they?

—. No, sir. He could walk, but it was very slow.

Q. But he could get on this car out there and sit on it?

A. Yes, sir; by a little help from my son when he got in the buggy at home and when he got out.

BLEED THROUGH

Q. Sitting on the cars at Raleigh don't take any exertion?
A. No, sir.
Q. And while the old man walks slowly he gets along?
A. Yes, sir; he can walk slowly.
Q. He can walk a mile or two right along, can't he?
105 A. Well, not without resting, I don't think.
Q. Well, if he took his time he could have got there?
A. He could have got there if he took his time, but I don't think he would have got there very soon.
Q. I understood you to say he could walk along if he stopped and rested a little; could walk two or three miles?
A. I suppose he could; I don't know.
Q. Well, if you were told he had walked two or three miles——

(Objected to by the district attorney and sustained by the court; to which counsel for defendant excepted.)

A. I never saw him walk that far. At that period of time I suppose he could have walked a mile, maybe.
Q. The old man paid you for the cow?
A. Yes, sir; he paid me.
Q. This receipt says received of him $15.
A. Yes, sir.
Q. Was this receipt right?
A. Yes, sir; that is right.
Q. That tells the way it happened, does it?
A. Yes, sir.
Q. This says, "Received of Mary Ann Anderson."
A. Yes, sir. That was his wife. He did not come over that morning. His wife came over.
Q. This is dated the 30th day of October.
A. Yes, sir.
106 Q. Well, now, Mary Ann did not hand you that money at all, did she?
A. Yes, sir; she handed me the money.
Q. She hand- you the money, Mr. Finley?
A. Yes, sir.
Q. Stop and think of that. Did Mary Ann hand you the $15 herself?
A. Well, I think maybe I may be a little mistaken. My son had the money that he had brought from Memphis in his possession at that time, and she came up and said that William Anderson had told her to come up and get the money from my son, but whether she paid it to me I won't be positive.
Q. You don't know whether she handed it to you or not?
A. I don't know for certain; I don't recollect.
Q. You wrote out this receipt, but you do not know whether he had been to town the day before or not, of your own knowledge?
A. No, sir; my son told me he brought him here.
Q. How old a man is he?
A. William Anderson? Well, sir, it would be hard to tell; he

GH POOR COPY

has got no records; but I have known the old man a good
107 many years myself. When I first came to this country I thought he was about 30 years of age, and that has been 30 or 40 years ago.

Q. You knew him when a slave, then?

A. Yes, sir; I lived within a mile or so of him.

Q. He cannot read or write?

A. No, sir.

Q. A dull, slow old fellow?

A. Dull and slow.

Q. He cannot count money?

A. Well, I don't suppose he could count bills of money; he can count silver money.

Q. He gets drunk occasionally?

A. He used to get drunk; I have not seen the old man drinking for a long while.

Q. Does he go to Raleigh often?

A. No, sir; hardly ever at all.

Q. Goes to church?

A. No, sir; he don't go to church; hardly ever. He ain't a member of the church, that I know of.

J. J. MURPHY, a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. Mr. Murphy, where do you live?

A. I live in Knoxville, Tenn.

Q. Are you employed in the Government service in any manner?

A. In the pension agency at Knoxville.

Q. What is your particular employment in the pension agency there?

A. I am assistant chief clerk.

Q. Who is the chief clerk?

A. Dr. Morrow.

108 Q. Do you know J. M. Cates?

A. Yes, sir.

Q. What position did he hold, if any, in the department?

A. He is called the designating clerk. He is designated to sign the checks.

Q. I will ask you if you can identify that check.

(Hands check to witness.)

The COURT: Is that the first check?

Judge GREER: We do not object. We concede that that is a genuine check that came from that office covering this pension.

Mr. SIMONTON:

Q. Now, I want to ask you if you can identify that paper.

(Hands another paper to witness.)

Col. GANTT: What is that paper?

Mr. SIMONTON: The voucher that goes with check.

Judge GREER: We concede the genuineness of that.

BLEED THROUGH

(The check and voucher were here offered in evidence by the district attorney and read to the jury.)

Mr. SIMONTON:

Q. Is that sort of paper necessary in the course of business in the office at Knoxville to issue a pension check on?
A. It is.
Q. Is that the pension check that went with this voucher?
A. It is; that check was issued on that.
Q. I wish you would read that check.

(Check dated October 3d, 1894, was here read to the jury by the witness.)

109 Q. Is there a mark of payment on that?
A. It is marked Paid October 11th, 1894.
Q. Is the Government stamp "paid" on there, too?
A. "Received payment through New York clearing-house. National City Bank of New York." I suppose that is the Government stamp.
Q. What is that there?
A. "Paid October 11th, 1894, New York."
Q. That is the stamp?
A. Yes, sir.
Q. That voucher shows a pension for what time?
A. From the 18th of October, 1890, to the 4th of August, 1894.

The COURT: The correctness and genuineness of the papers are conceded, Col. Simonton; also the Bloodson and Haynes checks and vouchers are genuine and came to the office just as this one did.
Judge GREER: Yes, sir; we concede that.

Mr. SIMONTON:

Q. Do you know the handwriting of the defendant, Lowry W. Humes?
A. Yes, sir.
Q. Have you ever seen him write at all?
A. No, sir.
Q. Have you seen papers purporting to be in his handwriting which he acknowledged to be his writing?

(Objected to by counsel for defendant as incompetent.)

Mr. SIMONTON: Well, we will prove that by some one else.
110 Judge GREER: That these checks are witnessed by him in his handwriting, we concede that.
The COURT: And you want to prove that Anderson's name was signed to it in Mr. Humes' handwriting?
Judge GREER: We admit it. We do not think this witness could prove it, but we admit it.
Mr. SIMONTON: Then, I have the record of Isaac Bloodson from the pension rools at Washington.
Col. GANTT: While *the* may admit the handwriting, we may not admit that the papers are competent.

SH POOR COPY

(The checks, vouchers, and certificates of William Anderson, Isaac Bloodson, and Joshua Haynes were all admitted and considered as read to the jury.)

Cross-examined by Col. GANTT:

Q. What is the first notice that you get that a pension has been granted?

A. We get a pension certificate from the Commissioner of Pensions, with an order to inscribe it on our list.

Q. And then you have a record of it there?

A. Yes, sir.

Q. Now, then, do you have the amount to which the pensioner is entitled?

A. We have the rate, the date of the commencement of the rate, and we figure out the amount.

Q. And you can ver*ily* easily make the aggregate; and then, when that is done, what do you do with the certificate?

111 A. Send it to the Commissioner with the voucher.

Q. What must be done with that voucher?

A. The voucher has to be executed and returned.

Q. Does that voucher contain the amount to which he is entitled according to your record there?

A. It does; yes, sir.

Q. Does it separate the amount to which the pensioner is entitled from the amount to which the attorney is entitled?

A. No, sir. It is all together; all included in the receipt.

Q. When you send the checks back do you send one check for the pensioner and one for the attorney?

A. Yes, sir.

Q. The attorney's fee is what—$10?

A. Yes, sir; in some instances.

Q. And that is the course of business?

A. Yes, sir.

Re-examined by Mr. SIMONTON:

Q. When the voucher has come to your office, duly executed, you mail that to your post-office address of the purchaser?

A. Yes, sir.

Q. How do you know the post-office address?

A. We take that as sworn to in the voucher.

Q. You send a voucher and a check?

A. If the pension is a continuous one, we send a voucher for the next quarter.

Q. In the same envelope with the check?

A. Yes, sir.

Q. A check is executed, and then a voucher for it for future payment?

A. Yes, sir; in a continuous pension.

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112 Q. The first one you get the date at which it begins and the rate, and you calculate that and put that in the first voucher?

A. Yes, sir.

Q. That is put in the receipt?

A. Yes, sir.

Q. And the voucher is for the full amount; but, when the check is drawn in favor of the pensioner, less the fee that may be allowed to the attorney?

A. Yes, sir.

Q. Where is that fee allowed and what do you do about it?

A. We are notified by the Commissioner of Pensions and instructed to pay that at the same time we are instructed to inscribe it. On the first payments two checks are drawn, one to the pensioner and one to the attorney.

Q. After that are any other attorney's fees allowed?

A. They may be if the Commissioner of Pensions directs it.

Judge GREER: We wish to say that we think that probably what is proven as to subsequent checks and subsequent vouchers after the first one—and that is the thing in issue here—may be a little bit enlarging the case and probably not competent. We will make a motion about that. We do not want to concede that.

The COURT: I understand you only concede their genuineness now. Make that objection later, and I will rule on it.

113 TUESDAY, *December 10th*, 1895.

ISAAC BLOODSON (colored), a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. Your name is what?

A. Isaac Bloodson.

Q. Were you a soldier in the late war?

A. Yes, sir.

Q. In what company and regiment?

A. 49 colored infantry, Company H.

Q. Did you make application for a pension?

A. Yes, sir.

Q. Where were you living then?

A. I was livin' down below Nonconnah on Mr. Craig's place.

Q. In Shelby county?

A. Yes, sir.

Q. To whom did you make the application?

A. Mr. Deadrick was the first one had it.

Q. Where was his office?

A. His office was out here in this street—out here.

Q. Did you get a pension while Mr. Deadrick was here?

A. No, sir.

Q. Well, who did you go to after he left?

A. I went to Brother Copeland.

Q. Did you go to anybody else?

POOR COPY

A. Yes, sir; I took it away from Mr. Copeland and carried it to Mr. Humes.

Q. Did you ever get any money on that application for pension?

A. I got it from Mr. Hume.

Q. When did you get it—the first you got?

A. Well, as nigh as I can ricollect, the fust I got I got it
114 Mr. Hume 'long in Christmas week.

Q. What year?

A. This last gone Christmas.

Q. And you got how much?

Ans. $50.

Q. Whereabouts was his office then?

A. His office was down here on this street facin' on Court square.

Q. On the street running to Court square?

A. Yes, sir.

Q. Do you know what they call the street?

A. No, sir; I don't know what they call it; at least, I don't know none the streets.

Q. Where had your mail—your pension letters—been going at that time?

A. It had been goin' to Mr. Copeland.

Q. After it ceased to go to Mr. Copeland, where did it go then?

A. I took an' fotched it to Mr. Humes.

Q. Tell the court and jury all about the payment he made to you of that money.

A. Well, I went to Mr. Humes, and I started from home an' I come up here by Mr. Humes' office, an' I stopped there an' went upstairs, an' when I stepped in his office he said, "Hold on, Uncle Ike, I'll tend to you directly." Well, I stood thar, I reckon, 'bout 10 or 12 minutes. Mr. Hume comes out the door an' comes in this room whar I was an' next to the door as you go downstairs,
115 an' he says, "Here, Uncle Isaac, here's $5." I crams it in my pocket. an' he hollers to me, "Uncle Isaac, you needn't come no more under three months." I says, "Yes, sir." I gets in my buggy an' goes on out to Mrs. Snyder's; never stopped nowhar at all, an' when I gets out thar my old lady asked me had I been by the office. I says, Yes. Asked me, Did I get anything? I said, Mr. Hume give me $5.

(Objected to by counsel for defendant as hearsay.)

Q. What did you do with the money?

A. Pulled it out my pocket an' handed it to the old lady, an' she was countin' it; stood by the table; an Miss Anna says, "Aunt Martha, what's the matter?" She says, "Nothin', only the old man has drawed a pension."

Q. That is improper to tell what she said. Was your wife counting it?

A. Yes, sir; an' Mrs. Snyder came; Mrs. Snyder came in thar, an' she says——

Q. No; you can't tell what she said; you can't tell their conver-

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sation. I reckon I might ask him the result of her count, if he knows it.

Judge GREER: That would be a hearsay statement. Mrs. Snyder is here as a witness.

116 The COURT: He may state that she counted it, if she did; then, if you have got her here, you can put her on the stand.

Q. Can you tell when that was? You say that was in the Christmas, do you?

A. Yes, sir.

Q. Do you mean that was before or after Christmas day?

A. That was after Christmas day.

Q. And was it before New Year's?

A. Oh, yes, sir.

Q. In the Christmas week, but after Christmas day?

A. Yes, sir.

Q. Where do you live?

A. Right here on Springdale avenue.

Q. And where does Mrs. Snyder live?

A. She lives up here on that side the race-track.

Q. How far is it from where you lived to where she lived?

A. I reckon it's between 3 and 4 miles.

Q. How far do you live from town? You say you live at Springdale?

A. Well, I reckon I lives 'bout three mile from town, from the mile post.

Q. How far is it out to Mrs. Snyder's from town?

A. This way, I reckon it's 'bout four mile.

Q. And you about how many miles from her?

A. I reckon I'm 'bout 3 or 4 mile from her.

Q. Is the nearest way to her house to come through town or some other way?

117 A. No, sir; my nearest way is to go by Young's.

Q. Who was down at Mrs. Snyder's when you went there? How came you to be going to Mrs. Snyder's?

A. Well, I was there of a Sunday. I went down to see Mr. Snyder. Mr. Snyder's always at home of a Sundays anyhow; he staid here in town, an' while I was there he give me some work to do. He told me——

Q. You need not tell what he told you; but you were out there on Sunday, and you can tell that you had a conversation with him, but not what it was. If you did anything after that conversation, tell that.

A. Yes, sir. Well, I done some plowin' there; sot out some trees that Monday; went back and got there, say, bright an' early Monday; eat my breakfast there.

Q. If I understand you, you were down at Mr. Snyder's on a Sunday. Was that the Sunday before Christmas?

A. Yes, sir.

Q. And after talking to Mr. Snyder you went back there on Monday morning?

H POOR COPY

A. Yes, sir.
Q. What were — doing there Monday?
A. I done some plowin' for her an' sot out some trees.
Q. Who was there that day?
A. Her daughter—Mrs. Snyder's daughter—an' her little
118 baby. Mrs. Snyder was gone to town.
Q. That was Monday. Now, how long was that before Christmas?
A. Well, that was, like this is Monday an' next day was Christmas.
A. Christmas was the next day, and you were at Mrs. Snyder's the day before Christmas?
A. Yes, sir.
Q. What did you do that Monday after you did that work, and where did you go Monday, if anywhere?
A. I went home Monday evenin'.
Q. Have you got a wife?
A. Yes, sir.
Q. Where was your wife that day?
A. She was at home.
Q. On Monday?
A. Yes, sir.
Q. You spoke of her being down at Mrs. Snyder's after that. When did she go and how came she to go?
A. Mrs. Snyder sent her little boy after her, an' her littles' boy come, an' said come an' take Christmas with her.
Q. When did that youngest boy come to your house?
A. Come Monday evenin', right behind me, before I took my horse out of the buggy.
Q. How did your wife get to Mrs. Snyder's?
A. He carried her in the spring wagon.
Q. What day was it you came in to Mr. Humes' office, as
119 you detailed here awhile ago?
A. Let me see. I believe the old lady staid there two days, an' next day, I believe, I went down there; believe she staid there two or three days—two days, anyhow; an' then I come by town here an' went on out to her house.
Q. On the next day you went to do the plowing and put out the trees, did you come by Mr. Humes' office at all?
A. Oh, no, sir; I had my wagon out there to do the plowin' an' when I had my buggy I come through town.
Q. That was after your wife had been there two or three days?
A. Yes, sir; an' I went up there after her.
Q. And it was on the trip going after your wife that you went to Mr. Humes' office?
A. That's it precisely, sir.
Q. Well, now, the day that you went down to Mr. Snyder's and did that plowing, were you in town at all that day—in the city here?
A. Oh, no, sir.
Q. Well, on the day that you went to Mr. Humes' office and he

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paid you the $50, as you have stated, was anybody else in the office?

A. Well, the office was full, but he called me outside the door.

Q. Can you read and write?

A. No, sir.

120 Q. If you had signed a paper like that (showing witness a paper) on that day, would you know it?

A. Oh, yes, sir.

Q. Well, did you sign that paper—make a mark on the back of that paper?

A. No, sir; I never made no mark.

Q. The day you got the money?

A. No, sir; never seed no paper like that; never seed no paper.

Q. What did he say about the $50, whether that was all that was coming to you?

A. No, sir.

(The Bloodson check for $567.25 was then read and shown to the jury.)

Q. I asked you a minute ago when he paid you the $50 was anything said between you and him whether that was all or whether that was right or not?

A. Didn't say nothin' at all. I just put it in my pocket an' was gwine down the stairs an' he hollered to me as I was gwine down the stairs I needn't come back no more for three months.

Q. When did you file your application for a pension?

A. I don't know nothin' at all 'bout that.

Q. You don't know how long ago it was?

A. No, sir.

Q. Did you get anybody else to count the money for you?

A. Yes, sir.

Q. Who was that?

A. That was Mr. Copeland.

121 Q. Well, after he had counted the money for you what did you do then?

A. He counted the money for me an' I went to him an' I asked him—I says——

Q. You can't tell what you asked him. Did you get him to do anything?

A. Yes, sir.

Q. What did he do?

A. I told him I'd give him a dollar if he'd write me a letter to city of Washington, to know how much money was due to me. I couldn't get no understandin'——

(Objected to by counsel for defendant as incompetent.) Objection sustained by the court and the last answer excluded.

Q. Well, what did you do after you spoke to Copeland? Did you see him write any letter for you?

A. He wrote it of a Saturday night.

Q. Do you know whether it was put in the mail or not, yourself?

POOR COPY

A. I come right down here.

Q. Did you come with it?

A. Yes, sir; come right down here an' mailed it an' backed it an' put it in the box myself.

Q. Did you get an answer to it?

A. I didn't get no answer. Mr. Humes got the answer.

Q. How do you know?

A. Beca'se I was here talkin' to Mr. Johnson—at his office
122 up here—an' this one-armed man come *come* to me an' said, "Mr. Humes want you to come to his office."

Q. Don't tell what the one-armed man said. Anything said where Mr. Humes was you can tell, but not what was said when Mr. Humes was not there.

A. Well, the conversation I had, I went to Mr. Humes' office, as he sent for me, an' I stepped in the door; he said, "Howdy, Uncle Ike?" I said, "Howdy, Mr. Humes." He said, "Uncle Ike, you sent a terrible letter to Washington city 'bout me." I said, "Mr. Humes, I had to do somethin'; couldn't get no understandin' 'bout how much money was due me."

Q. Go on and tell all that occurred between you and Mr. Humes.

A. He said, "Uncle Ike, I wouldn't take a five cent of it to save my life." Well, I told Mr. Hume that I didn't say that he would.

The COURT:

Q. What was it Mr. Humes said?

A. Said he wouldn't take a five cent from me to save his life. I said, "Mr. Hume, I didn't say that you would, only I just wanted to get some understandin' how much was coming to me."

Q. How long was that after Christmas after you got your $507?

A. I reckon that was on—let's see——

123 Q. I am talking about the time you were talking to Mr. Humes, not the time you sent the letter off.

A. It was after Christmas, I guess. It was after Christmas—after that Sunday I had the letter wrote.

Q. How came you to go to Mr. Humes' office to get your pension money? Did you know it had come?

A. No, sir; I didn't know whether it had come or not. I just went there to get a hearin', or to get a letter, or somethin' or 'nother. I had no idea there was any money there for me. I was very glad when I got there.

Q. Did he say anything to you about how long it had been there?

A. No, sir.

Q. Did he say anything to you about signing any papers at that time?

A. No, sir.

Cross-examined by Judge GREER:

Q. Ike, you are a very tall man, are you not?

BLEED THROUGH

A. Not so very tall; somethin' 'bout six feet or so; I reckon a little over six feet.

Q. And your hair and beard are white, and were so last Christmas, as much as they are now?

A. Well, I don't know, sir, how white they was. I never took notice 'bout that, whether they're any whiter.

124 Q. Just about the same you have looked for several years, are you not?

A. I reckon so.

Q. And you say it was not the Monday before Christmas that you went to Mr. Humes' office?

A. For what?

Q. For your money.

A. Oh, no; you got that wrong; I never went there then.

Q. I said you have told the jury that it was not the day before Christmas you went to Mr. Humes' office for the money?

A. When I went to Mr. Humes' office for the money it was 'long in the Christmas.

Q. And after Christmas day?

A. No, sir; I don't know; yes, sir; of course, that was 'long in the Christmas.

Q. Do you feel any certainty about it—about when you went there?

A. I had no recollection 'bout what time or what day it was, only I know it was 'long in the Christmas week.

Q. And you know it was after Christmas day, now that you think of it?

A. Yes, sir.

Q. Don't you know that you were there the day before Christmas?

A. Well, I might have been there the day before Christmas lookin' for a letter.

125 Q. Did you just now tell the jury that you were not expecting any money?

A. Listenin' for a hearing an' expectin' it. I didn't know whether there was any money or not; didn't know but what Mr. Hume might have got some papers like he had.

Q. And you might have been there the day before Christmas about that? Do I understand you to tell the jury that?

A. Yes, sir; I didn't say nary time I was there, but I don't think I was there the day before Christmas, because it was a right smart while.

Q. Did you not say in answer to my question awhile ago that you might have been there the day before Christmas?

A. Did I say that?

Q. You don't remember what you did say a moment ago?

A. Yes, sir; I do.

Q. Don't you remember in answer to Mr. Simonton you said you were plowing all that Monday?

A. Yes, sir; I was.

Q. Now, you know you were not there, don't you?

GH POOR COPY

A. Where?

Q. At Mr. Humes' office.

A. No; I wasn't at Mr. Humes' office, beca'se I was plowin'.

Q. Then how was it you did not know just now?

A. You takin' me every kind of a fashion now. I had to study for you; you're gone. I can call the same words I said awhile ago.

Q. Then do it.

126 A. As I said, I was at Mrs. Snyder's plowin' o' Monday, an' I done the plowin' o' Monday an' sot out some trees.

Q. Now, when was it you got that letter written to find out about how much money you ought to have gotten?

A. Sunday follow'in'—Saturday follow'in'. I come here an' backed it.

Q. You did not say anything to Mr. Humes about not getting enough money?

A. I didn't say anything to him 'bout gettin' any money at all.

Q. You went off and got a man to write about it?

A. To get some understandin' 'bout it.

Q. When he handed you the $50 why didn't you say, "This — not all that is coming to me"?

A. I didn't know.

Q. How did you know the Saturday afterwards?

A. By folks talkin' an' tellin' me an' other people whar was drawin' pensions, an' I seed how much they drawed, an' I seed papers they had, an' I didn't have 'em.

Q. You knew how much was coming? You knew that you would get $36 four times a year?

A. No, sir; I didn't have time to count it, and I know he said I'd get it every three months.

Q. Did you know how much you were to get at this time?

A. No, sir; I didn't know 'bout how much I was to get, but then I knowed what I did get. Mr. Hume give me $30 once, an' I went home an' counted it, an' I got Mr. Oates to count it. Mr.

127 Oates he done read my voucher.

Q. I did not ask you about the details of that. Is it not a fact that you knew that what was being allowed these old soldiers was $12 a month for their back pay?

A. Oh, no, sir. I didn't know nothin' 'tall 'bout that. I just heard 'em say.

Q. When Mr. Deadrick made your application for a pension did not he tell you you were going to get back pay?

A. No, sir.

Q. Your friend, Mr. Copeland, did not he tell you anything about your going to get back pay?

A. He say I get pay from the time I put in my papers.

Q. And did not he tell you that it would be several hundred dollars?

A. He say several hundred dollars.

Q. You knew all that before Mr. Humes handed you $50, because Mr. Copeland had already told you?

BLEED THROUGH

A. I know Mr. Copeland say if I put in for the old claim that ought to be the rise of four or five hundred dollars comin' to me.

Q. And you knew that, and when Mr. Humes handed you the $50 why did you not say to him, "I was to get the rise of $400 or $500"?

A. I wasn't to contradict his word. He was put there to do my writin'.

128 Q. You did contradict his word by writing off to the Pension Office that week?

A. I see what the others got.

Q. Why did not you say something to Mr. Humes about it then?

A. No, sir; I never said nothin' 'tall to Mr. Hume 'bout it. I never had no argument with him.

Q. You did not come back and see if there was not a mistake?

A. I did come back an' say this was a mistake.

Q. When did you come back?

A. When he paid me the $30 I come back to him an' told him there was a mistake.

Q. Why did not you come back and tell him this was a mistake this time?

A. I just thought he knowed his business, an' I put him there an' give him the papers for to do right by me. He knowed how much was comin'.

Q. Then why did you go off and get somebody else to write a letter?

A. I just thought I ought to got what others got.

Q. Why did not you come back to him and tell him?

A. Oh, no, sir; I can't argy with white folks that a way.

Q. If you argued one time, why not the other?

A. I didn't argy with him the fust time, but the other time I did argy with him. I thought he was doin' right, you know.

Q. Did not you know there was over $500 coming to you? Mr. Copeland told you that.

129 A. He told me ought to be—he didn't say how much a month.

Q. Did not you take this check that has just been shown you, not the day after Christmas or two days after, but the day before Christmas, the 24th day of December, 1894? Did not Mr. Humes hand you that check, and you made your mark on it?

A. No, sir.

Q. After you made your mark on it did not a colored man by the name of W. G. Franklin, whom you have seen here, witness your signature—witness your mark?

A. On that paper? No, sir.

Q. And did not an old soldier? You can recall him now, Isaac?

A. You hit me plumb now.

Q. Did not you go out of Mr. Humes' office with this rather fat man Sanderlin, an old soldier himself, and go to the corner of Main and Madison streets, to the Mechanics' savings bank, and hand that paper to the cashier?

A. No, sir.

GH POOR COPY

Q. The man behind the gate there?

A. No, sir; never saw no bank. The superintendent down here at the post-office down here carried me to the bank. I never saw no other.

Q. And did not the cashier count out to you $567.25 and hand it to you?

A. No, sir; why, if I had a got $500 I'd a gone to hunt for the old lady.

Q. And that was on the 24th day of December, on Christmas eve, wasn't it?

130 A. No, sir; I never have got it.

Q. You did not get that money on Christmas eve?

A. No, sir; never have got it.

Q. Was not that Monday of last Christmas week?

A. No, sir.

Q. And you went around there in company with Sanderlin?

A. No, sir.

Q. And did not the cashier of the bank, when he paid you this money, say something about that being a big amount of money for the day before Christmas?

A. No, sir.

Q. Not a thing of that sort happened?

A. No, sir.

Q. And yet when you got the $50, which was after Christmas day, you knew you ought to have had as much as $500?

A. You've gone clear out of my knowin' now. I never has signed no papers and got no certificate. I come back to Mr. Hume's office for my voucher; never had no papers at all when he give me that $50; never saw none. I crammed that in my pocket.

Q. You never signed what they call a voucher?

A. No, sir; left all the papers, beca'se Mr. Copeland told me to go back an' get my papers, beca'se he had the letter an' papers an' all.

Q. You had papers, but you had never signed them?

A. Hold on! gi' me time; gi' me time.

Q. Mr. Copeland told you to go back and get your papers?

131 A. Well, that's right. Just give me a little time.

Q. Take all the time you want.

A. When I got that money I never got no papers of no sort. I goes back to Mr. Hume an' ask him for these papers, my letter an' my voucher. Well, I carried that voucher round finally to get folks to read it for me. I lost that voucher; at least, I thought I lost it; but when I come to find it I got my vouchers. That's the paper that Mr. Copeland wrote the letter from.

Q. And that was a voucher?

A. That was my voucher what I thought I had lost.

Q. Well, you had signed that, hadn't you?

A. I hadn't signed it.

Q. But you know what I am asking you. Had not you made your mark on it?

A. Well, the voucher show for itself. I ain't no hand at writin'.

Q. Had not you made your mark on that voucher?

BLEED THROUGH

A. No, sir; I never had made no mark.

Q. Yet you were carrying around your voucher and had not made any mark?

A. I wasn't ready to sign it.

Q. Before you get any money you knew you had to sign these vouchers?

A. Oh, yes, sir; I knowed I had to sign it; but I never had signed none before; never made no cross-mark on none.

132 A new voucher, what Mr. Hume sent an' got for me, that's the one I signed my hand to.

Q. Now, Isaac, as a witness here before, you swore you would tell the whole truth, didn't you?

A. I told all you asked me.

Q. Did not you tell the whole truth?

A. That was my aim to do.

Q. Why didn't you tell me about getting that letter written?

A. Nobody never asked me about it. I just told what they asked me. I told that gentleman right there (indicating Mr. Simonton).

Q. He knew it at that time.

A. He knew it. I asked him 'bout it. I asked him was he gwine to let that stand.

Q. But you did not make any statement before the former jury about getting a letter written complaining about Mr. Humes?

A. No, sir; I didn't. I just 'plain what you asked me; but this time you told me to tell all about what I knowed to the jury.

Q. Weren't you asked to tell all you knew before?

A. No, sir.

Q. Did not the district attorney ask you to tell all about this matter before?

A. No, sir; he didn't tell me particular all I knowed; told me to tell whatever they asked me, an' I done so.

Q. Your old lady had gone on a visit up to Mrs. Snyder's?

133 A. Went up there to take dinner with Mrs. Snyder.

Q. You had known the Snyders for some time?

A. Well, I been knowin' 'em a good while.

Q. And when Mr. Humes handed you this money you went straight out there?

A. Straight out there.

Q. Your wife was standing at the table?

A. Yes, sir.

Q. That was in the kitchen?

A. Yes, sir.

Q. Was not your wife sitting at the table eating?

A. No, sir; she wasn't eatin'. She was standin' at the table.

Q. What time in the day was it when you got there?

A. Soon in the mornin'.

Q. Well, what do you call soon in the morning?

A. 'Bout 8 or 9 o'clock, as nigh as I can come at it.

Q. Just about breakfast time?

A. Oh, past breakfast time.

Q. But soon in the morning?

POOR COPY

A. Yes, sir.
Q. And you had not counted your money at all?
A. No, sir.
Q. You cannot count money, can you?
A. Yes, sir; I can count it if you give me time.
Q. You asked the old lady to count it?
A. No, sir; she asked me to let her see it.
Q. Did not you say you asked her to count it?
A. No, sir; I said I handed it to her. She told me to let her see it, an' I pulled it out my pocket an' handed it to her, an' she
134 was standin' at the table an' talkin' to me, an' Mrs. Snyder heard her, an' Mrs. Snyder said, "What's the matter, Aunt Martha?"
Q. I asked you if you did not hand the money over to your old lady and she commenced counting it.
A. Yes, sir.
Q. And she can count money too?
A. I see you gwine back to the matter.
Q. And you had not counted it at all?
A. Oh, no, sir; I never pulled it out o' my pocket until I got there. after he give it to me.
Q. You just took the money he handed you and never knew how much it was?
A. No, sir; never noticed how much it was; just crammed it down in my pocket an' never took it out.
Q. What pocket?
A. In this here pocket (indicating). This here is the very coat.
Q. And you say you can count?
A. I can count a little if you give me time.
Q. You can tell figures when you see them?
A. Oh, no, sir; I don't know nothin' 'bout no figgers.
Q. And this money was in bills?
A. It was that.
Q. If you can't tell figures how can you tell how much money is on the bills?
A. That's what I tell you, I didn't know figgers, didn't I?
Q. How can you tell money?
135 A. If you give me this here silver money I can tell. I can tell, sort o', 'bout a five-dollar bill if you give me that.
Q. Was this he gave you in five-dollar bills?
A. I never looked at it.
Q. You looked at it when your wife counted it?
A. No, sir; I was settin' at the stove when she was at the table.
Q. When Mrs. Snyder counted it you looked at it?
A. No, sir; I was settin' at the stove.
Q. What did Mrs. Snyder say when she counted it?
A. She say, "Yes, Uncle Ike, it's $50."
Q. Did I understand you to say you cannot count or you can co[illegible] money?

BLEED THROUGH

A. Don't get nothin' on me I didn't say. I say I can count money if you give me a little time.

Q. You say you can count money if they give you time?

A. Yes, sir; I said that.

Q. And you did not try to count any of this, though you had all that day to do it in?

A. Yes, sir; my feelin's was hurt, the way they was countin' it, that I didn't get no more than that.

Q. So you knew you had not got enough then?

A. Yes, sir.

Q. And you never said a word?

A. No, sir; only to ask people to try and give me some understandin'.

Q. Your feelings were hurt that very day because you thought you had not got as much as you ought to have had?

A. Yes, sir.

136 Q. And when he gave you $50 you thought you ought to have had more?

A. Well——

Q. And did not say a word to Mr. Humes?

A. No, sir; I didn't cross no word with him at all; just thought he knowed his business, an' I put up with what he give me.

Q. What did you want to find out any more about it for?

A. Well, I thought I had a right to see—to look out whether any more was comin' to me or not.

Re-examined by Mr. SIMONTON:

Q. I did not understand you when you were asked about the conversation with Copeland in which he said something about there ought to be $400 or $500. Was that before you had been to Mr. Humes' office and got the $50 or after you had been there?

A. I think it was after I been there; it was after.

Q It was after you had been there?

A. Yes, sir; as nigh as my recollection can remember now, I think it was after.

Q. Isaac, you stop and think a minute about what you have just told this jury. When I was asking you why you did not say anything to Mr. Humes and whether you had found out or not how much money was coming to you, didn't you tell this jury,

137 about fifteen minutes ago, that when Mr. Deadrick made out your papers he did not tell you how much was coming to you, but that before you ever got any money from Mr. Humes and when you went to Mr. Copeland he told you it was the rise of $400 or $500 that was coming to you; that Mr. Copeland told you? Did not you just now tell the jury that Mr. Copeland told you, before you ever went to Mr. Humes, that the rise of $400 or $500 was coming to you in pension money?

The COURT: Well, can you answer that?

A. Squire, they has kind o' done me up. You must give me a chance to study 'bout it.

POOR COPY

The COURT: Was your conversation with Copeland about it before or after you got the money from Mr. Humes? If you cannot answer it, say so.

A. I ain't gwine to answer that question, boss.

Mrs. FIDEE SNYDER, a witness for the Government, being first duly sworn, was examined by Mr. Simonton, as follows:

Q. Are you a married woman?
A. Yes, sir.
Q. Does your husband live in the city?
A. Yes, sir.
Q. In what business is he engaged?
A. The baker's business.
138 Q. Do you know one Isaac Bloodson, a colored man?
A. Yes, sir.
Q. Was he at your house at any time last December?
A. Yes, sir.
Q. Was any of his family there?
A. No, sir.
Q. Well, was he there more than once in December?
A. Well, I reckon he was. Maybe he was. I don't know.
Q. Well, do you remember? Did he do any work at your place?
A. Yes, sir.
Q. What was that?
A. He was plowing up some ground and planting some trees.
Q. When was that?
A. The day before Christmas, on a Monday.
Q. Do you remember what time he came there and how long he stayed?
A. No, sir; I could not say what time he came. I had gone to town that morning. I left early.
Q. What time did you go back home?
A. I got home before dark or a little before dark.
Q. Did you see him there on Monday at all?
A. Yes, sir; he was there when I came back from town.
Q. Well, do you know anything about what he did that day? Was there any contract, any payment, or anything of that sort between you?
A. Yes, sir; he plowed up the ground and he moved
139 them trees and planted them and I paid him when I got back.
Q. Was he there at your place any other time that week?
A. He was there the Sunday before he plowed, I think.
Q. After that, did he come out there again?
A. He came after Christmas.
Q. Very well: tell the circumstances—all about his coming the next time; what he came for. Did you see him?
A. Yes, sir; his wife was at my house and she was helping me and he came after her the 27th of December, and when he came in

BLEED THROUGH

he said that he had got his money; told his wife. I was in the kitchen.

Q. You need not tell what was said, but what was done. Did you see him with any money?

A. Yes, sir; he handed it to his wife.

Q. Did you see how much money there was?

A. Well, I counted it for them.

Q. How much was there?

A. $50.

Q. How long did Bloodson stay after the money was counted, madam?

A. He stayed there until about 3 or 4 o'clock in the evening.

Q. And where did he go then, do you know?

A. Went home, I reckon.

140 Cross-examined by Judge GREER:

Q. Mrs. Bloodson was up there on a visit to you?

A. No; she came to *heed* me.

Q. You had known her for a long time?

A. I do.

Q. They had been friends of yours?

A. No; not particular—just would come and help me when I got any work to do. I'd send for them.

Q. What time was it when he got out there on the 27th of December, 1894?

A. I think it was about 11 o'clock.

Q. It was not soon in the morning, then?

A. No; it was not soon.

Q. Where were you at the time?

A. I was in the kitchen.

Q. Were they eating at the table?

A. No.

Q. His wife was at the table, then?

A. No; she was washing dishes.

Q. Over at the table?

A. Yes, sir.

Q. Where was he sitting when you saw him with the money?

A. Right by the stove.

Q. Then she was over at the table washing dishes?

A. Yes, sir.

Q. How could she handle the money?

A. He handed her the money when she came in.

Q. Where did he take it from?

A. I don't know. He had it in his hand when I saw it.

Q. Where did he put it when she got through?

141 A. Put it in his pocket, I reckon.

Q. Where were you? You saw him when he came in?

A. Yes, sir.

Q. Then you must have seen him when he took the money out to hand her?

H POOR COPY

A. I did not see that.

Q. Did not you notice that, too? You saw all these other things about your friends?

A. No, sir; I never.

Q. You counted the money?

A. Yes, sir; he handed it to his wife, and she counted it.

Q. Did not you see him take it out of his pocket?

A. No.

Q. What pocket did he put it back in?

A. Now, I don't know.

Q. You don't know whether he put it in his pants pocket or in his coat pocket?

A. No, sir.

Q. Did he have it in a pocket-book?

A. No.

Q. Did you see him put it in a pocket-book?

A. No, sir.

Q. Where was it when you saw it—how did he have it?

A. He just had it rolled up in his hand when I saw it.

Q. You saw his wife count it?

A. Yes; and it seemed like she couldn't count it, and I counted it for her.

Q. He tried to count it?

A. No; he did not try to count it. He handed it to her.

142 Q. Was there anything remarkable about that day? Did anything happen on that day to make you remember all this?

A. Yes. Aunt Martha came out, and I wanted her to help me cook lard.

Q. You never counted any money for any of your colored friends before?

A. I didn't know I had any colored friends.

Q. You said these were not particular friends. Have — got any others besides these?

A. Of course I have.

Q. You never counted any money for them before?

A. No, sir.

Q. Did merely counting some money that day make you remember the exact day and the hour it took place?

A. Yes; I can remember the hour.

Q. I suppose you can remember the bills?

A. I do.

Q. What kind of bills were they?

A. Five-dollar bills.

Q. No silver?

A. No, sir; all greenback-.

Q. You know about money? You have counted a great deal of it?

A. Yes, sir.

Q. And you know it was greenbacks?

A. Yes, sir.

BLEED THROUGH

Q. It was not national banks bills?
A. No, sir.
Q. And you remember that circumstance, but do not remember whether it was in a pocket-book or not?
A. No, sir.
Q. Did anything happen in your family that day peculiar or otherwise?
143 A. Well, we killed a hog and Aunt Martha was there to help me cook the lard.
Q. Killing a hog was not anything unusual in your family, was it?
A. Well, we don't kill them every day.
Q. Was that the only hog that you killed that day?
A. Yes, sir.
Q. You had killed several before that week. Now, take the last hog-killing and tell me something that happened that day. Was Bloodson out there on a visit?
A. No, sir.
Q. Then a hog-killing was not such an extraordinary thing as to make you remember everything that happened that day, was it?
A. Well, I don't know.
Q. So there was nothing about that hog-killing to make you remember these facts, was there?
A. Well, I just remember.
Q. And you don't know why, do you?
A. No, sir; I don't.
Q. That has been nearly a year ago, hasn't it, Mrs. Snyder?
A. Yes, sir.
Q. You were not in business with these people in any way?
A. No, sir.
Q. What is the size of your husband's place?
A. Well, I couldn't tell you exactly.
Q. Well, he has plowing done out there right often?
A. Well, he had that ground up where he moved the trees.
144 About 55 feet front that lot is and 104 feet deep.
Q. Was that the only time you ever had any plowing done?
A. Well, he plowed for us when we moved out there.
Q. What day of the month exactly was it that he plowed for you the other time?
A. I don't know.
Q. Well, how is that, you know about this and not about that? This is none of your concern, is it?
A. Which?
Q. Whether he plowed before Christmas or when. Why don't you know the other time?
A. Well, I can't remember about that.
Q. Did anything happen on that other day that was extraordinary?
A. No.
Q. He did not do any unusual plowing on that day?
A. No.

GH POOR COPY

Q. And you say it was a little lot, 55 by 104 feet?
A. 55 by 104.
Q. And he plowed all that lot?
A. Yes.
Q. The house stood on a part of it?
A. No; no house on it.
Q. And it took him all day to plow that up?
A. No.
Q. How long did it take him?
A. I was not at home. It was plowed when I come home.
Q. And you don't know whether he plowed it early in the morning or late in the evening?
A. I do not.
Q. And the fact is you don't know at all, of your own knowledge, that he plowed it?
145 A. It was plowed up when I come back.
Q. He might have plowed it in half an hour. So you do not mean to tell the jury that Isaac Bloodson was out there at your house all day?
A. Well, he was just finishing planting the trees when I got home late in the evening.
Q. And where he had been in between times you cannot tell?
A. Well, I can't tell that.
Q. Well, why can't you tell me about the other time he did the plowing?
A. I don't know. It has been about 3 or 4 years ago.
Q. What was there about that day to make you remember it?
A. Well, I just remember it.
Q. And you just remember the other, too, don't you?
A. No; I don't.
Q. You don't just remember the other?
A. No.

Miss ANNA SNYDER, a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. Tell the jury what your name is.
A. Anna Snyder.
Q. Are you any kin to Mrs. Fidee Snyder?
A. Her stepdaughter.
Q. Where do you live?
A. On Orange mound, south of the race-track.
Q. You live with Mrs. Snyder and your father?
A. Yes, sir.
Q. De you know a colored man named Isaac Bloodson?
A. Yes, sir.
Q. And do you know his wife?
A. Yes, sir.
146 Q. Where were you on the 24th of last December, if you know?
A. At home—at the house.

BLEED THROUGH

Q. Is there anything to cause you to remember the date?

A. Yes, sir; Uncle Ike was at our house employed that day doing some work on the place, transplanting trees and plowing. Mother was in town all day and I was housekeeping. I was the only one at home that day.

Q. Did you have any visitors?

A. Well, yes; my cousin came that morning; being as it was Christmas eve, she brought a Christmas tree for my youngest sister. Uncle Ike helped take the tree out of the wagon.

Q. What was your cousin's name?

A. Mrs. Seebring.

Q. What was it you said she brought?

A. A Christmas tree.

Q. For some one at your house?

A. Yes, sir.

Q. How do you say it was gotten out of the wagon?

A. Uncle Ike hel-d me to take it out; he was the only one around that could assist them. We just called him across the avenue where he was plowing.

Q. What time of day was that?

A. When she arrived? I think it was about 9 o'clock.

Q. Were you there all the day yourself?

A. Yes, sir.

Q. And how long did Isaac remain there?

147 A. He remained there all day. He came, I guess, about 7 o'clock in the morning, prepared for work all day. Papa made arrangements with him the Sunday before to come over early that morning.

Q. Did you hear your papa make any arrangements with him?

(Objected to by counsel for defendant as incompetent.)

Q. Isaac was there on the Sunday previous?

A. Yes, sir.

Q. On Sunday before this Monday?

A. Yes, sir.

Q. Was Isaac out there again during that week that you know of?

A. He was there on Thursday in Christmas week.

Q. Who else was there on Thursday, if you know?

A. Old Aunt Martha, his wife. She had come Christmas Eve night after Uncle Ike went home. My little brother went after her to be with us Christmas day around the house, and he came the following Thursday to take her home. She stayed until Thursday.

Q. Do you know anything about any counting of money? Did you see any there?

A. I did not see it, but I heard them speak of it?

Q. You cannot tell what was told you if you did not see it.

Cross-examined by Judge GREER:

Q. How old are you, Miss Snyder?

A. Twenty-four.

POOR COPY

148 Q. You are not a teacher?
A. No, sir.
Q. You follow no business pursuits?
A. No, sir.
Q. You are living out there with your father and your stepmother?
A. Yes, sir.
Q. Did you have — unusual to happen at that Christmas time?
A. Anything unusual happened? No, sir.
Q. Nothing unusual happened?
A. No, sir.
Q. Do you remember the last time you had him employed before this Christmas?
A. I never attended to anything like that. I never paid any attention to it.
Q. Well, why did you pay any attention to this?
A. Well, Mr. Ragsdale was out at our house last Saturday and summoned me. I didn't like very much to come, and what brought me up here is I was the only one at home when he was doing the work.
Q. Did Mr. Ragsdale tell you that?
A. No, sir; he asked me if I was there, and he wanted to know who was there.
Q. And you talked it over with your mother, did you not?
A. No, sir; I just said I was the only one there.
Q. Did your mother talk to you about what she testified to here before?
A. No, sir.
Q. Oh, Miss Snyder, your mother did not tell you what she testified?
149 A. Not particularly. I did not pay any attention to the case until Saturday, when I was summoned.
Q. That did not help you to remember, did it?
A. Why, no.
Q. Had not your mother, after she had been up here before as a witness, had a talk with you?
A. Not particular.
Q. Well, had she not generally, Miss Snyder?
A. I did not pay any attention to the case particular; it didn't concern me.
Q. How was it, then, you told Mrs. Ragsdale about your being at home?
A. Well, I was compelled to say who was at the place.
Q. You say you told him and she did not tell you. How came you to tell him?
A. I happened to be there in the room when he arrived and he asked mama who was there.
Q. Had not your mama come back and told you that she has testified about old Isaac being out there on the 27th?
A. No, sir; we did not think that would have anything to do with the case until Saturday, when Mr. Ragsdale came out.

BLEED THROUG

Q. And that is the way you came to remember about his being there?

A. Yes, sir.

Q. As a matter of fact, you don't remember a single other time he was there, do you?

150 A. I don't remember the particular dates. He is there right often.

Q. Did he work the time he was there before that "from early morn till dewy eve," the time before that?

A. No.

Q. What was he doing the time before when he worked there? Was he setting out trees?

A. No, sir.

Q. Was he plowing?

A. He has plowed often, but I don't know whether he was plowing then or not.

Q. Was he plowing the time before that or not?

A. I don't remember.

Q. Well, the time before that, was he out there plowing?

A. I don't remember.

Q. Now, was there anything about Isaac's working out there that day that made any impression on you?

A. No, sir.

Q. Nothing at all?

A. No, sir.

Q. He had worked there often before?

A. Yes, sir.

Q. And as to how long he had worked you had not noticed; it was not your business, was it?

A. No, sir.

Q. So you don't remember anything at all about how long he worked the time before that nor the time before that?

A. No, sir.

Q. You were attending to your own household affairs?

A. Certainly.

Q. And did not stand at the window to see whether Isaac

151 plowed so much or plowed so little?

A. No, sir.

Q. And you only know he was there early in the morning and was there when the Christmas tree came? What time did you say he came to go to work?

A. Well, early—between 7 and 8 o'clock.

Q. Did you see him any more after that—after the Christmas tree came?

A. I gave him something to eat at 12 o'clock.

Q. Well, your Christmas tree came before 12 o'clock?

A. He did not have anything to do with the tree, though; did not know anything about its coming.

Q. What time in the day was that?

A. About 9 o'clock.

POOR COPY

Q. And then you gave him something to eat at 12. After that you did not notice him any more until late in the evening?

A. No, sir.

Q. So you don't really know whether he was there all that time or not?

A. Oh, I know he was there, but I didn't pay any particular attention to him.

Q. Were not you attending to your own household affairs, arranging that Christmas tree, and getting out the Christmas dinner? You have told us you were busy about your household affairs; you have told us that.

A. I was sewing that day at the dining-room window. I could see him there, but didn't pay any particular attention to
152 his work.

Q. And you don't know whether he was there all that time or not, do you?

A. Oh, he was there all the time.

Q. Well, the time he was there before, did you notice to see how long he was there?

A. We never had him employed all day before. He just came to our house right often, and we have had his wife there.

Q. Can you tell the jury, now, whether he worked all the morning about the place at any time?

A. I couldn't state exactly.

Q. You could not tell what day he was there before?

A. What brought him there Christmas Eve day was we had bought some new lots just across from our place and wanted to have the ground broken up, and he brought his two mules and a plow, and that brought him over there.

Q. What brought him over there before that?

A. I don't know.

Q. What is about this to make you remember it more than any other time — it that Mr. Ragland came out to see you last Saturday?

A. Yes, sir.

Q. He told you Isaac had been plowing there, and asked you if it was not so?

A. No, sir; what brought it in he asked mama if she was
153 there and she said no; he wanted to know who was there then.

Q. And you told him all about your being there?

A. He just asked that question.

Q. And you told him you were there?

A. Yes, sir.

Q. And told him about what you have told us here, too?

A. He did not speak anything about that.

B. J. COPELY (colored), a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. Tell the court and jury what is your name.

A. B. J. Copely.

BLEED THROUGH

Q. Where do you live?
A. 100 Marly avenue.
Q. Do you know Isaac Bloodson?
A. Yes, sir.
Q. Did you do anything for him about his pension?
A. Yes, sir.
Q. In what way and at what time?
A. Well, it was in the fall of 1891 when he first came to me and got me to take the business of writing—corresponding between him and M. V. Turney.
Q. Turney was his attorney?
A. In Washington.
Q. You did this correspondence for him?
A. Yes, sir.
Q. How long did you continue to do that for him?
A. I continued until the fall of 1894.
Q. What became of it then?
A. Well, he came there and got his papers and taken them
154 away from me, and said he was going to carry them to Mr. Humes.
Q. Did you ever speak to Mr. Humes about it?
A. No, sir.
Q. After his pension was allowed—well, after he took his papers from you—did he ever come back and consult you about it again?
A. Yes, sir; he came back.
Q. When did he come back to you?
A. On the 29th day of December, 1894.

(Objected to by counsel for defendant as incompetent. No ruling by the court.)

Q. Did you do anything for him at that time?
A. Yes, sir.
Q. What was that?
A. I counted ten five-dollar bills for him, and also he brought me on the same day a voucher, and from that voucher he requested me to write a letter to D. A. Carpenter, at Knoxville, to know how much money was sent to him or allowed to him.

(Counsel for defendant objected to the witness relating any conversation that occurred. Objection sustained by the court.)

Mr. SIMONTON:

Q. May he not state for what purpose the letter was written?
The COURT: He can simply state that he employed him to write a letter; then you may go from that and show what the reply to it was, if the witness got the reply.
155 Mr. SIMONTON: I think the defendant has got the reply.
Judge GREER: Gives us notice, and we will produce it.
Mr. SIMONTON: What became of the letter when written?
A. I wrote the letter on a Saturday night, the same day that he came to me, and on the Sunday morning he came back to my house

GH POOR COPY

and I and him came here to the office, and I gave him the letter and he mailed it.

Q. To whom was it addressed?

A. D. A. Carpenter, Knoxville, Tenn. He asked me then——

Q. You cannot tell what he asked you.

The COURT: If you want to show the contents of that letter and you can show it is in the defendant's possession and he refuses to produce it, why, then you do that; but at this stage of the case that is not admissible.

Mr. SIMONTON: This proof may not be full enough, but the witness Bloodson said the letter did go to defendant Humes and Humes said to him that was an awful letter he wrote up yonder about him, and he says his mail was going to 17 West Court street, the address of the defendant.

156 The COURT: That is not full enough. He might have referred to Carpenter's letter to Humes calling attention to that letter. Now, the reply to it, where is that?

Mr. SIMONTON: The reply to the letter is what I am speaking of having gone to the defendant. The original letter was mailed to Carpenter.

The COURT: What would Carpenter have been sending his letter to Humes for?

Mr. SIMONTON: It was addressed to the pensioner, but to 17 Court street. The pensioner said he never got the letter, and the defendant said to the pensioner, "That's an awful letter you wrote up yonder about me."

The COURT: I don't see why in the world they were sending a letter like that, inquiring about Humes, to Humes. It would have been perfectly stupid to have done that.

Mr. SIMONTON: I want to ask this question: You say a voucher was fixed up by you, or he brought a voucher to you?

A. Yes, sir; he brought one out there the morning that he came, to me.

Q. What became of that voucher?

A. I gave it back to Bloodson.

Q. Do you know whether it was mailed or not at all?

A. No, sir.

157 Q. You do not know of your own knowledge?

A. No, sir; I don't know.

Q. Do you remember what voucher it was?

A. It was made payable the February before, 1895. It was the voucher on which I taken the name, at the same time not knowing anything like it was coming up. It was payable from November the 4th, 1894, to November the 4th, 1895.

Q. The voucher that would come?

A. It was blank; it was not filled out.

Q. When you saw it?

A. No, sir; it was not filled, and from that I seen Mr. Carpenter's name on it, and I addressed a letter from that blank to Mr. Carpenter as though it was Bloodson himself writing it.

BLEED THROUGH

Q. What time of day was it when you first saw Bloodson on that Saturday?

A. He got to my house about half-past 7 in the morning.

Q. Did you make any calculation for him as to the amount that he should receive?

A. Yes, sir.

Q. Did you direct him to go anywhere for any papers?

A. Yes, sir. Now, when I was writing for him I received a letter along in June, 1894, that his claim was allowed, and at
158 that time he asked me about how much did I think he would get. He then showed me a little card, which I have got in my pocket now, that he got from Mr. Deadrick, showing——

Q. Let us see that card.

A. And I told him that if he drew from the time that his claim was filed up until then he ought to get in the neighborhood of $500 or $600, and the morning that he came to my house, on Saturday, he said to me——

Q. You cannot tell what he said. He gave you this card?

A. Yes, sir.

Q. When was that?

A. That was in the fall of 1891 he gave me that.

The COURT: Mr. Simonton, about that letter—what I rule is that in the present state of the proof it does not lay a basis. You may ask the defendant when he comes on the stand or otherwise show that he got that letter, and unless he then accounts for it you cannot offer evidence as to the contents; but at present I do not think the basis is strong enough for it.

Mr. SIMONTON: May I ask this witness, if your honor
159 please—possibly it comes within the exclusion—as to where the answer was directed to be addressed?

The COURT: Well, if he knows that, you may ask that.

Mr. SIMONTON:

Q. He wrote the letter. Well, Mr. Copely, what papers did he bring to you? Now, any others? I believe we had progressed to that point in which you said you had directed him to get some papers about the pension on that Saturday?

A. Yes, sir; as I had made the calculation you spoke about just now, he then stated to me that he had not got what he thought he ought to have.

Q. You cannot tell what he stated. Did he bring any papers?

A. Yes, sir; he bought me a voucher in an envelope.

Q. Was the voucher filled out?

A. No, sir; it was blank.

Cross-examined by Judge GREER:

Q. You were not in the pension business? You were not a pension attorney?

A. Only corresponding for M. V. Turner, Washington.

SH POOR COPY

Q. Then you were in the business? He was an attorney in the Pension Department and you assisted him here?

A. Yes, sir.

Q. That is, you would get up the proof and fill out the declarations?

A. Yes, sir.

160 Q. In filling up the declaration, which you had done for old man Bloodson, as I understand, it was necessary for him to make his mark, as he could not write?

A. Is it necessary? Yes, sir.

Q. In other words, Mr. Copely, a man who wants to become a pensioner of the United States Government has got to file a declaration, to begin with?

A. Yes, sir; to commence with.

Q. That is, a petition to be allowed a pension, and states in what company he served and what regiment, &c.?

A. Yes, sir; he did that.

Q. Now, you filled that out and he signed that—that is, he made his mark on it?

A. Yes, sir; he couldn't write, but he made his mark and two persons witnessed it.

Q. And then he had to take statements from the witnesses as to whether they knew him or not?

A. Yes, sir.

Q. Now, the old man understood all that?

A. All that I did for him he did.

Q. He certainly understood all that and certainly understood from you way back yonder in June, 1894, that he was going to get $500 or $600 if it was allowed?

A. Yes, sir.

Q. And you had found out that it was allowed and told him so?

A. I did.

Q. There are a lot of other pensioners here of his race be-

161 sides old man Bloodson—colored people?

A. Yes, sir.

Q. And there was nothing to keep the old man from knowing? You had explained everything to him—how much was coming to him and all?

A. I had explained everything to him until he took it away from me and turned it over to Mr. Humes.

Q. That was the way the pension was allowed? The rate per month was $12?

A. It was $12 per month.

Q. You had explained all of that to him, and he knew when his quarter would be due, didn't he?

A. I don't know.

Q. Well, he had the voucher in his hands?

A. Yes, sir.

Q. Didn't you tell him that voucher showed when the next quarter would be due?

A. I didn't explain anything on the voucher to him. He just

BLEED THROUGH

left it there with me. I asked him this, for his certificate, and told him if he brought me the certificate from Mr. Humes I could then tell him how much was sent to him.

Q. I did not want your conversation with him. I just asked whether you explained to him what the voucher was.

162 A. No, sir; I did not explain anything further than this, that if I had his certificate I could see how much was sent to him.

Q. And he asked you to write to Mr. Carpenter?

A. Yes, sir. He did not say to Mr. Carpenter particularly. He asked me to write and see how much money was sent to him.

Q. That was along about the 29th?

A. Yes, sir.

Q. You wrote in Bloodson's name?

A. Yes, sir.

Q. Did he touch the pen or sign it?

A. I just signed it Isaac Bloodson and directed it to come to the custom-house.

Q. And signed "Isaac Bloodson" yourself, just as if he was writing it?

A. Yes, sir; and then read it over to him and asked him was that right, and he said it was.

Q. The old man had set down White Haven as his residence, had he not, when you first had anything to do with him?

A. He had come from there then and resided here in Memphis.

Q. But lived there before he came to Memphis?

A. He told me he had. I did not know him until he came here.

Q. Did not he get his pension certificate in 1891 and went down to White Haven and lost it and had to get a permit to draw his pension money, and that was the reason he was behind?

163 A. He did not tell me about his losing anything; but I will show you the paper that he give me after he failed to get his discharge.

Re-examined by Mr. SIMONTON:

Q. You have been asked as to his pension, if his pension had been allowed?

A. Yes, sir.

Q. And the date, that you could calculate what it was?

A. Yes, sir.

Q. Did all the pensioners receive the same amount or did the law fix different rates?

A. There is a different rate.

Q. It would not necessarily have been $12 a month, then?

A. There is a different rate, and I told him that if he was allowed the rate of $12 per month——

Q. Well, how could you know whether he was allowed the rate of $12 per month?

A. Well, I didn't know it at that time, but I told him if he was allowed that.

H POOR COPY

Q. What was it you sent him to Mr. Humes to get?
A. To get his certificate and voucher and the letter in which his check came.
Q. You could not tell yourself what it would be unless you had his vouchers or something to show the date and when his pension was allowed?
A. I did not, and told him to go to Mr. Humes.
164 Q. What papers did he bring to you?
A. He brought back only his voucher and an envelope.
Q. Did that voucher show how much it was?
A. No, sir.
Q. So you could not have the grounds for ascertaining yourself fully what had been allowed him?
A. No, sir; I told him unless I seed the certificate I couldn't tell how much he was allowed.

JOSHUA HAYNES (colored), a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. Tell your name to the jury.
A. Well, I tole 'em 'bout the money. My name is Joshua Haynes.
Q. Were you a soldier?
A. Yes, sir.
Q. In what company and regiment?
A. 61 United States colored, Co. H.
Q. Did you apply for a pension?
A. Yes, sir.
Q. Who did you apply to to get it?
A. Mr. Deadrick's the man that I went to to get it first.
Q. Where was his office?
A. It was on Short Court street, in the cellar, at that time, where I portered in.
Q. Did he get it for you?
A. No, sir.
165 Q. What became of it?
A. Mr. Humes got it for me.
Q. Is Deadrick here now?
A. I don't know, sir.
Q. How come you to get Mr. Humes, then?
A. Well, Mr. Deadrick had left the office and Mr. Humes was in the office, and I went to him to get it for me.
Q. And did he get it for you?
A. Yes, sir.
Q. Well, when?
A. He got it—it was in April, 'bout the 11th, of '94.
Q. Did he make you any payment?
A. Yes, sir. He wrote a letter to me and sent it by the 2 o'clock carrier in the evening to come up to see him, and the mail-carrier come 'long at 2 o'clock and handed it to me, and he says for me to come up to see him, and I goes up to see him.
Q. Where was his office then.

BLEED THROU

A. His office was on Madison street—upstairs on this side of Madison street—no; on the same side the bank is.

Q. You know the number?

A. I disremember the number now.

Q. The same place the Scimitar office is?

A. It was upstairs.

Q. Go on and tell what you did when you got up there?

A. When I got up there he made a affidavit for increased
166 pension. Some white gentleman was in there and he, of course, tacked onto him until he got through with him, and after that this gentleman went out.

Q. Do you know who that gentleman was?

A. No, sir; I wouldn't know him if I was to see him; and after he goes out Mr. Humes makes out a affidavit for me for the increased pension—I was getting $6.00 at that time—and he told me to sign it, and I signed it, and he says, "You bring up two witnesses in the morning to identify you, and I'll send it off;" and I said, "All right;" and he then reaches in the drawer and pulls out a strip about as big as a five-dollar bill, and he wrote on it.

Q. Can you read?

A. No, sir; I can't.

Q. Was it a strip like that (showing witness a check)?

A. Well, this picture wasn't on it at all. I never saw one of these with this picture on it until 'bout the 12th or 13th of May, when I got one of these; never had one of these in my hand until that time, in 1894. Then he signed that, and I goes over to the bank and cashes it.

Q. The one you signed first?

A. I didn't sign nothing like this at all.

167 Q. What sort of paper did you sign?

A. Well, it was white, and he wrote on it, and he told me to touch the pen, and I done it.

Q. Whereabouts was it you touched the pen on it?

A. I don't know, sir. I ain't got but one eye, and can't see good out the other.

A. After you touched the pen what did you do and what did he do?

A. He got up and put on his coat and tole me to set still until he come back, and he come back.

Q. Did you see where he went?

A. No, sir; I sot still until he come back, and after he come back he run his hand in his pocket and give me some money; and I said, "Mr. Humes, this is a little more money than I want to carry home;" and he went over with me to the bank, and I puts $71.00 in the bank and brings out $41.00, and I goes off. I got three ten-dollar bills and one five and four silver dollars, and—I don't know—I might have had some silver change in my pocket; it wasn't a dollar, I know.

Q You did not go to the bank at all.

A. When I went to cash the check? No, sir. I never seed the check.

POOR COPY

Q. You put your name to something, and Mr. Humes went across and got the money and came back and gave you
168 what you have stated?

A. Yes, sir.

Q. Did he not give you $232.40?

A. No, sir; he didn't; he give me, with what I put in the bank, $113.00; all I see; all I got.

Q. Here is a check for that payment, dated April 12th, 1894, for $232.40 which I will read to you.

(Counsel here read said check to the witness and jury.)

Q. Do you know when you deposited that $75.00 in the bank?

A. On the same day. He went right over to the bank with me.

Q. That was after he brought the money back?

A. Yes, sir.

Q. What bank did you go to?

A. Right over on the corner of the alley, I think. I can't read. I seen the man I put it in with.

Q. When you put the money in the bank did they give you anything?

A. Give me a bank book.

Q. Would you know that book if you saw it?

A. No, sir; I wouldn't know it. I know I got all the money out of it; all but a little.

Q. Could you look at that and tell whether it is the same book or not?

(Shows a book to witness.)

A. No, sir; it was a book like this.

169 Q. You say it was like this?

A. Yes, sir; a book like this.

Q. What did you do with your book?

A. Well, I owed Mr. Suggs a little on a lawsuit and he garnisheed me and I been there that morning and got ten ten out.

Q. What became of your book?

A. I turned it over to Will. Bolton, who was a deputy, and he went up and got the $15 on the book.

Q. He garnisheed you for the last $15 and you turned the book over to the officer?

A. Yes, sir.

Q. Well, I reckon there is no dispute about this being the book.

(No objection being made by counsel for defendant, the book was here shown to the jury.)

Q. Now, I understand you to say that when Mr. Humes went over to the bank the first time you did not go.

A. No, sir; I didn't go over.

Q. And it was after he came back that you went over? After telling him that you had more money than you wanted to take home with you, you went and deposited $75.00 and got this book in the Union savings bank?

BLEED THROUGH

A. Yes, sir.

Q. Then how much money did you have? Can you count money?

170 A. Yes, sir; all you give me; all you put before me to count.

Q. You can read figures, then?

A. Yes, sir; I can count money.

Q. And after depositing the $75.00 where did you say you went?

A. Went home; went right straight down Madison street to Second street, and kept up Second street until I got to Jackson street, and went to 72 Front.

Q. What payment did you make out of that money, if any?

A. I never made no payment until I went over to Mr. Guion's office.

Q. A real-estate agent, isn't he?

A. Yes, sir; agent for this place I rented from him.

Q. Who saw you with that money, if any one?

A. My wife saw it, and my son-in-law and my daughter.

Q. What is your wife's name?

A. Harriet Haynes.

Q. You say you got some notice from Mr. Humes to come to his office?

A. Yes, sir; I did.

Q. What sort of notice was that?

A. Well, there was a little strip inside of it, and I bundled it up and gave it to Mr. Ragsdale, there.

Q. You gave it to Mr. Ragsdale, did you?

A. Yes, sir.

171 Q. Well, did you get some postal cards from the defendant, too, about your pension—paper like this?

A. Them's the ones I got.

Q. And you gave them to Mr. Ragsdale here?

A. Yes, sir; he got all them.

Cross-examined by Judge GREER:

Q. What was the name of the bank that you began doing business with?

A. The one on the corner of the alley—savings bank; I can't see.

Q. Then how do you know which bank it was?

A. I know which one I went in.

Q. Do you know the names of them?

A. No, sir; I don't know the names of 'em.

Q. You have lived here in town a long time?

A. Yes, sir.

Q. Had a good deal of money in your time, too, haven't you?

A. That's the most I have had.

Q. You got a bounty payment larger than that?

A. Yes, sir; I did get one.

POOR COPY

Q. Then why did you say that is the most you have had? That was a mistake?

A. Yes, sir.

Q. How much bounty money did you get?

A. $200.

Q. Did you not tell us about it the last time you were here as a witness, only about ten days ago, and say when you got that money it was $200?

A. And $27.

172 Q. So you have had a good deal more than this at one time, haven't you?

Mr. SIMONTON: Not according to your theory; you say $232.

Judge GREER:

Q. Now I ask if it was not a fact that you have had more than that.

A. Most of that time of pension money.

Q. You had got this bounty money for being a soldier.

A. Well, bounty money don't concern with pension money.

Q. Well, all the same, it was more than this; you had handled money. You had had money—made money, too. Hadn't you a farm?

A. Yes, sir.

Q. Rented land, too, didn't you?

A. I have worked on shares.

Q. In the Mississippi bottom?

A. I never worked a day in Mississippi in my life.

Q. At Sans Souci?

A. I called that in Tennessee.

Q. Is not that in the Mississippi River bottom?

A. No, sir; I don't call that Mississippi bottom.

Q. You worked, anyhow, on bottom land on shares?

A. No, sir; I said I had worked on shares, but not in Mississippi.

Q. As a man who had had money and $237 of bounty money, you tell us you did not know the bank you put your money in?

A. I can go to that bank.

Q. How do you know how to draw a check?

173 A. When the mail-carrier brings it to me I say, Some one read it, and go and cash it.

Q. How did you get your money out of the bank when you wanted it?

A. I take that book and hand it to the man and told him what I wanted and he give it to me.

Q. Don't you know you write you a check?

A. No, sir; I don't write it out. He get somebody to do it, I reckon.

Q. You put your mark to it?

A. Yes, sir.

Q. Do you know what that check is?

BLEED THROUGH

A. I know what them checks is now.
Q. Do you know what this bank book of yours is?
A. Yes, sir; I know what that is.
Q. Do you know what that little slip of paper is that somebody wrote up there, and you touched your hand to it?
A. Yes, sir.
Q. That is the way you know you would get your money and these are checks? Wouldn't you know what bank you were drawing that check on?
A. I told you I couldn't read nor write. I don't know the name of the bank.
Q. You would get somebody to draw a check?
A. I get somebody to read it. That book tells me what bank.
Q. The day you got this money you went to Mr. Humes'
174 office on Madison street?
A. Yes, sir; that was on Madison street.
Q. What day of the month was it?
A. I know it was somewhere 'bout the 11th or 12th, and I know what he give me.
Q. The 11th or 12th of that month?
A. Of April.
Q. What year?
A. 1894.
Q. You know the years and the months very well, don't you?
A. Yes, sir; I do.
Q. His office was right opposite that bank building, or very nearly opposite, on Madison street, wasn't it?
A. Yes, sir.
Q. Before you ever got that money you had signed a voucher for it, hadn't you?
A. No, sir; I don't know nothing 'bout no voucher signed for it.
Q. You know what a voucher is?
A. Yes, sir; I got one in my pocket.
Q. Well, pull out that one you have got in your pocket and show it to us.
A. Here this is (showing paper).
Q. Well, that seems to be a good deal more.
A. Several things in there; only one voucher.
Q. This is what you mean, isn't it (indicating)?
A. Yes, sir.
Q. This is your voucher for your next pay?
A. Yes, sir.
175 Q. Look at this one (handing witness paper), and see if that paper was not signed by you before you ever got any money from Mr. Humes.
A. No, sir; I never signed that.
Q. You know a voucher is a receipt you have to sign before they will pay you any money, don't you?
A. I know I signed these here before I got any money, but I don't know nothing 'bout that.
Q. Do you know William Oliver?

POOR COPY

A. No, sir; I don't know him.

Q. A colored boy about 18 or 19?

A. I seed him 'bout the office several times there at Mr. Humes' and I seed the boy round there several times.

Q. A bright-looking colored boy that worked for Mr. Minter Parker in an office adjoining Mr. Humes'?

A. I seed a boy there 'bout that complexion, but I didn't know his name.

Q. Do you know W. G. Franklin, a colored man?

A. I know a big fat man named Sanders.

Q. Franklin is a slender man of a gingerbread color, the janitor that worked about there.

A. No, sir; I don't know him.

Q. It appears from this that Franklin and the colored boy I have described witnessed your signature?

A. I don't know nothing 'bout that.

176 Q. This appears to have been made on the 5th of April, 1894, is before the date when you say you got your money?

A. I never signed no voucher for Mr. Humes nor teched the pen till I got the money.

Q. You positively state that you never signed this voucher before you put that money in the bank?

A. I don't know nothing 'bout it.

Q. If you had done it you would know it?

A. Yes, sir; if I had signed it I'd know it.

Q. This check that has been show- you, you signed a slip of paper about the size of a five-dollar bill?

A. Yes, sir.

Q. I asked you about that picture of your old General Sherman.

A. I never saw that before.

Q. Did not you say before that you did not know whether it was on there?

A. No, sir; I didn't. I never signed nothing like that till the May payment.

Q. You say that it was between the 11th and 13th of April that you remember to have got your money from Mr. Humes?

A. Yes, sir.

Q. Now, as a matter of fact, on the 17th day of April, 1894, didn't you in the presence of Mr. Humes and of W. G. Franklin—this colored man I have asked you about—write your name on the back of that check and go over to that bank, the First National bank, and present that check to Mr. Harris for payment?

A. No, sir.

177 Q. Did not he refuse to pay it to you until he could see Mr. Humes?

A. No, sir; it wasn't but one check refused paid to me, and that was the August payment in that bank.

Q. Then you deny that that took place between you and Mr. Harris?

A. Yes, sir.

BLEED THROUGH

Q. Did not you go back to the office for Mr. Humes and he walked over to the bank with you, and then Mr. Harris paid you?
A. He didn't go over to the bank with me till we went to deposit that $75.00 in there.
Q. Did you deposit that in the First National or the Union savings bank?
A. On the corner of that alley. I won't be positive which name, but I can go in the bank.
Q. When Mr. Humes handed you this money did he hand it to you in bills?
A. Yes, sir.
Q. All in bills?
A. There was some silver money in it, I suppose.
Q. When he handed it to you there was some silver money in it?
A. I think there was some silver money in it.
Q. What sort of money did you put in the bank?
A. I put $75.00 in there, in the bank.
Q. In what sort of bills?
A. I handed him the greenback, some ten and four twenties, and he handed me back some.
Q. I thought you didn't want to carry it home?
178 A. I see I didn't have nothing to carry home to the old lady and told him to give me five dollars back.
Q. Why didn't you hand him $75 instead of handing him $80?
A. I told him to give me change.
Q. He handed you back in bills?
A. I don't know whether it was bills or not. I know he handed me $5.00 back.
Q. Can't you remember whether it was in silver or bills or how? You remember all these transactions?
A. He give me five dollars back.
Q. I am now asking you your memory concerning how the $5.00 was made up, whether of bills or silver.
A. He give me five dollars. I know he give me five dollars.
Q. And you handed him $80?
A. And he give me $5.00 back.
Q. What did you do about writing your name that time?
A. He handed it to clerks in there and signed my name. I couldn't write.
Q. Well, didn't you make your mark?
A. I touched the pen.
Q. In that bank?
A. Yes, sir.
Q. In what?
A. I touched it. He handed it through the hole to me, and I touched the pen. I don't know what it was on.
Q. You don't know the size of the book, or what?
A. No, sir.
Q. Was it a book or a slip of paper?
179 A. It was a book. I touched the pen.

POOR COPY

Q. Who witnessed your doing it?

A. Mr. Humes was there; he was the one that went over with me.

Q. That was in a little corner of the main building, wasn't it?

A. Yes, sir.

Q. You saw Mr. Brooks here the other day when you were testifying, didn't you?

A. I don't know him when I see him.

Q. Don't know Mr. Brooks, the cashier of the savings bank?

A. I know him when I go in there. If he was out of there I wouldn't know him.

Q. And yet he drew all these checks in there for you and he was the man you left all your money with?

A. He was the man.

Q. I find nine checks here that you say he filled out for you?

A. Yes, sir.

Q. And you would not know him unless you saw him in the bank?

A. No, sir.

Q. Don't you remember that Mr. Brooks, this young gentleman that was there?

A. No, sir; I wouldn't know him by sight, because I can't make out no kind of man from here to that door there (indicating about — feet).

Q. When you would cash a check you would be closer to him than that door, closer than to me now?

A. Yes, sir.

180 Q. Closer than to that nearest juryman?

A. Yes, sir.

Q. You can see a man easily that distance, can't you?

A. Why, yes, sir.

Q. Josh., what time was it when you got this money or you say you got this money from Mr. Humes? What time was it you say you got home?

A. It was in the evening. The mail-carrier came round of an evening in my ward 'bout 2 o'clock, and that's the time I got the letter.

Q. That is the time you got the letter from Mr. Humes?

A. Yes, sir; and then I went up there and got the money right away—right afterwards.

Q. What time did you get home with the money?

A What time it was? It don't take me over 15 minutes to walk home from Madison street to Jackson street.

Q. What we want to get from you is the time. What was it when you deposited this money in bank?

A. Well, the mail-carrier comes along in the evening, and I goes on up there, and he leaves me this letter, and I had it read, and Mr. Humes wrote me to come up to see him, and directly he
181 gives me the money, and I says, "This is a little more money than I want to carry home with me," and he went over to the bank with me and I put it in the bank.

BLEED THROUGH

Q. What time was it when you put it in the bank?
A. Well, that evening. I didn't have no watch or clock to tell what time it was, but I know it was that day.
Q. Let us know about what time you think it was when you got home.
A. Well, about 2 o'clock when I was at home and the mail-carrier comes round.
Q. It was after that that you brought the money back home?
A. Yes, sir; after 2 o'clock.
Q. It must have been some time after, because you had got the money and carried it back.
A. Yes, sir; after 2.
Q. How much after 2 do you think it was?
A. I don't know, sir.
Q. Wasn't it after 3 o'clock?
A. After 3 o'clock, anyway.
Q. It was after you had had your dinner that the mail-carrier brought you this letter?
A. Yes, sir; I had had dinner.
Q. Your dinner-time is 12 o'clock, isn't it?
A. If I ain't doing nothing I eat any time I get hungry.

Mr. SIMONTON: I want to introduce that pension certificate, just to identify this person.
The COURT: You have got the certificate and a copy of the roll, as you had in the other case?
182 Mr. SIMONTON: Yes, sir.
Judge GREER: I do not think this is competent. The roll shows him to be a pensioner, and we admit that.
The COURT: Under what act of Congress was this pension allowed?
Judge GREER: June 17th, 1890.

Doc ANDERSON (colored), a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. What is your name?
A. Doc Anderson.
Q. Are you any kin or connection of Joshua Haynes?
A. Yes, sir.
Q. What is it?
A. I married his oldest daughter.
Q. How far did you live last April a year ago from Joshua Haynes?
A. About three doors, in the same building.
Q. What was your business then?
A. Hauling coal.
Q. How long had you been hauling coal?
A. About ten years, or maybe a little longer.
Q. Did you see Joshua Haynes at that time with any money?
A. Yes, sir; I happened to come by home and I stopped and went upstairs, and I went in his room—I have to pass his door—

POOR COPY

and he said he had drawed his money. He had it on his knee, counting it.

Q. How much money did he have?

183 A. I seed three ten-dollar bills and a five and four dollars in silver and one paper dollar, all I ever seed.

Q. Do you know what time of day that was?

A. It was, I'm sure it was, between 12 and 11, I think; I don't know.

Q. Well, are you certain about the time it was?

A. No; I'm not certain 'bout the time.

Q. How came you to be there?

A. Sometimes I ain't got no 'backer, and stops and go by home and gets 'backer and a drink of water, 'case it's right on the way to my yard.

Q. Every day?

A. Yes, sir; pass there every day.

Q. Did you see Haynes when he got home?

A. He hadn't been in the house there but a few minutes.

Cross-examined by Col. GANTT:

Q. Mr. Joshua Haynes is your father-in-law?

A. Yes, sir.

Q. What is your wife's name?

A. Hannah Anderson.

Q. How long have — been married?

A. Well, I can't say exactly how long it is; over 12 years.

Q. And you are hauling coal?

A. Yes, sir.

Q. And your pa-in-law was in his room?

A. Yes, sir.

Q. And counting the money on his knee, was he?

A. Yes, sir; counting it on his knee.

Q. And that was the only thing he had on his knee?

184 A. The money; that was the only thing I saw, 'case I was in a hurry; never paid no 'tention.

Q. And it was between 11 and 12 o'clock?

A. I ain't right sure.

Q. But you wouldn't say it was earlier or later?

A. I can't say.

Q. Didn't you take dinner there?

A. No, sir; I always eats at my own house.

Q. Never eat with your pa-in-law?

A. Sometimes; it's very seldom.

Q. You stopped there between 11 and 12 to get a drink of water, and what else?

A. Went to get either water or 'backer, one; can't say which one; ain't certain whether I went to get 'backer or water.

Q. They are both necessaries of life to a colored man, but you don't — which one you needed?

A. Been so long, I can't remember which one.

BLEED THROUGH

Q. Yet you can remember about the money—three ten-dollar bills and a five and four dollars in silver and one in paper?
A. I ricollect that.
Q. It was on his knee?
A. On his knee. He was counting it.
Q. Did you get the water or the tobacco?
A. Yes, sir; got what I went after.
Q. You were only there a short time?
A. Yes, sir; I takes my load on them, 'case I'm hauling by the load.
185 Q. And as you got the tobacco or water or whatever it was you went back to your dray and mules?
A. Went back to my team.
Q. Didn't stay there and take a rest?
A. Didn't have time.
Q. You stood up whilst you were there?
A. Yes, sir; I stood up.
Q. Who else did you see there?
A. I disremember exactly who was there; was some more in there. I know his wife was there, and I can't say exactly who, 'case I didn't take that much pains. I said, "Josh., that little money you got; ought to take care of little money you got and save it."
Q. Did your father-in-law need such caution as that?
A. That's my advice to him, or him to give it to me if I have money.
Q. And you gave the old man a piece of your mind?
A. I — very glad to have him give me that if I needed it.
Q. You were just leaving him. Was that a parting shot?
A. I was going on back to my work. If you hire me you want me to take your time, don't you?
Q. Well, you were going away when you gave him the advice?
A. When I was going out of the door I give him that word.
186 Q. Did you look him square in the eye?
A. I don't know.
Q. Is there anything, Dr. Anderson——
A. No, sir; I ain't no doctor, Doc.
Q. Well, was there anything to make you remember that there were th-ee ten-dollar bills and four silver wheels and one paper dollars? Was there anything to impress that on your mind?
A. I know very well when I look at anything and count it. Of course, I'm counting money every day for white people, for I handle from $100 to $200 for Mr. Hanna, and it's my business to carry it in my head.
Q. Did you make a memorandum of it?
A. I keeps count of it in my head.

Mr. SIMONTON:

Q. I want to ask you, did Joshua Haynes have any little book that day?
A. He had a book on his knee.

H POOR COPY

Col. GANTT:

Q. You told me he hadn't anything else on his knee but the money.

A. I know he had papers and money, too, but I taken no time with that paper.

HANNAH ANDERSON (colored), a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. What is your name?

A. Hannah Anderson.

Q. You have been sworn?

A. Yes, sir.

187 Q. Are you any kin to Joshua Haynes?

A. Yes, sir; he is my father.

Q. Are you the wife of Doc. Anderson?

A. Yes, sir.

Q. Do you know anything about when Joshua first got his pension through and got some money on it?

A. I 'members him drawing some pension in April.

Q. Of what year?

A. In 1884—in 1894.

Q. Last year?

A. Yes, sir; last year.

Q. What do you know about it?

A. Well, all the money part what I saw. I seen three ten-dollar bills and one five and four dollars, one silver and one paper dollar.

Q. Where did you see that?

A. I saw it in his room.

Q. Where had he been; do you know?

A. No, sir; I don't know where he had been.

Q. How come you to go in there?

A. Well, I'd been always going in there—in his room.

Q. You did not live in the same house?

A. We live in the same building, just three doors apart.

Q. How come you to see the money? What was he doing with it?

A. He had it in his hand.

Q. Had he just come in?

Col. GANNT: Let her tell; don't lead her.

Mr. SIMONTON:

Q. Who else was there?

A. At the time wasn't anybody in there but I and him and his wife.

188 Q. How come you — know what sized bills they were?

A. Well, I seen 'em.

Q. Did you count it?

A. No, sir; I didn't, to say count 'em, but I was looking at 'em.

Q. Did you have them in your hand?

BLEED THROUGH

A. No, sir; I didn't have 'em in my hand at all. His wife had 'em.
Q. Was she looking at them, too?
A. Yes, sir.
Q. Did nobody else come in there?
A. Nobody else didn't come in there; only I was in there.
Q. Did your bring anything else but the money?
A. No, sir; didn't bring anything else; that's all I seen.
Q. Did you see no little book?
A. No, sir; I didn't see no little book at all.
Q. Do you know about what time of day it was?
A. It was in the evening.

Cross-examined by Col. GANTT:

Q. Well, Mrs. Anderson, what time in the evening was it?
A. I never looked to see what time it was. I know it was kind o' late in the evening.
Q. You were examined here before *you*, weren't you?
A. Yes, sir.
Q. How long before?
A. I was here last Wednesday, I believe, or Wednesday before last—last week some time.
189 Q. Didn't you say it was about 2 o'clock; that you were just starting out to do your work—to wash—that it — about the time you went out to work?
A. Yes, sir.
Q. And that was about the hour—about 2 o'clock? Did you see your husband there?
A. He come in afterwards. He wasn't in there when I come in.
Q. How long after that?
A. I don't know what time he come in.
Q. He was not about there then?
A. No, sir.
Q. Wasn't he there at 12 o'clock?
A. No, sir; he wasn't there. If he was there at 12 o'clock I wasn't there.
Q. Where were you at 12 o'clock?
A. I was at work.
Q. What time do you go to your dinner?
A. I always get in at half past 1.
Q. And then you start to your work again about 2?
A. Yes, sir.
Q. Did you get your dinner that day?
A. Yes, sir.
Q. Where?
A. At the place where I was working.
Q. And you were just in the habit of going in there, and you went in your father's room, and your ma was there, and you and your pa and your ma were all in there together, and your pa had the money in his hand?

POOR COPY

A. Yes, sir; he had it in his hand when he first come in.

Q. Were you there when he first came in?

190 A. I wasn't in there when he first came in, but I come in directly after he come in.

Q. If you were not in there when he came in and did not see him come in, how do you know that he had the money in his hand when he come in?

A. Well, he had it in his hand when I got in there.

Q. In which hand?

A. I never took notice what hand he had it in.

Q. In one of them, though, sure?

A. Yes, sir.

Q. Was his hand open?

A. I don't know, sir; never noticed.

Q. Was it shut?

A. I don't know, sir.

Q. Did he have all those ten-dollar bills and those four silver dollars and that five and that paper doliar—have all that in one hand?

A. I never took notice to see whether he had it all in his hand at once or not.

Q. Was he counting it?

A. He gave it to his wife, Aunt Mattie.

Q. Did you count the money?

A. No, sir; I never counted it.

Q. Can you count money?

A. Mighty little.

Q. I suppose you can count little money, but not big money?

A. Yes, sir.

Q. You are not much on the count?

A. No, sir.

Q. What year did you say this was?

A. I said it was in 1894.

191 Q. In the month of April?

A. Yes, sir.

Q. You know all the months in the year, don't you?

A. Yes, sir; I know most on 'em.

Q. Which is the one you don't know?

A. Some of 'em I don't know and some I do.

Q. You say your husband came there after that?

A. Yes, sir.

Q. Did you see him when he came?

A. No, sir.

Q. How do you know he came?

A. Well, the child told me he come in there.

Q. You must not tell what your husband said.

A. They told me when I come back at night.

Q. Were you summoned as a witness when you were examined before up here?

A. When I was up here; yes, sir.

Q. Who summoned you—your father?

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A. No, sir; he never.
Q. Did not you testify when you were examined before that your father told you to come?
A. Yes; he told me first time I was here.
Q. He came down at night and told you you were wanted, and you came the next day?
A. Yes, sir.
Q. And that is all you know about it, isn't it?
A. Yes, sir; that's all I know.

C. Q. HARRIS, a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

192 Q. Your name is C. Q. Harris, I believe?
A. Yes, sir.
Q. And what is your occupation?
A. Teller of the First National bank, sir.
Q. In this city?
A. Yes, sir.
Q. Look at this check—this being the Joshua Haynes check; identify it now and read it, so the jury may see what it is. Was that check paid through your bank?
A. (After looking at check). Yes, sir.
Q. And, as the teller, were you the person who paid the money out on it?
A. I presume so, unless I happened to be out a minute. I could not state positively.
Q. Do you know by whom that was presented?
A. No, sir; I could not state, but I think it was presented by the person who represented himself——
Q. We are asking you of your own knowledge?

The COURT: If he has an impression on his mind he can state it.

A. No, sir; I have not. It was cashed on the strength of Mr. Humes as a witness.

Mr. SIMONTON:

Q. Those sort of papers, would they or not be payable to the bearer when they were witnessed by a person *to* who is responsible?
193 If the person to whom it was payable could not write his name and his mark was witnessed by responsible witnesses, in accordance with what he stated there, would they be payable to the bearer?

(Objected to by counsel for defendant as a legal question and not a question of fact.)
The COURT: The court will answer any question of that sort in the charge that you want if it is endorsed by the person to whom it is made payable. I will give the instruction to the jury if you request it. That is a legal question rather than a custom of the bank.

POOR COPY

Mr. SIMONTON: May I inquire, then, as to the course of business in his bank in reference to that kind of check?

(Objected to by counsel for defendant as incompetent.)

The COURT: You may ask the question and I will see what it is when asked.

Mr. SIMONTON:

Q. Did the First National bank cash checks of this character and description at any time when you were there—pension checks, I mean?

(Objected to by counsel for defendant as incompetent.)
The COURT: I will see in a moment.

A. Well, I usually required—for instance, in that case I probably required Mr. Humes to identify the man that the check
194 was payable to. If it had been a small amount, like numbers of them are, I would not have required it.

Mr. SIMONTON:

Q. You have no recollection as to this particular check, whether you did or not?

A. None at all, sir.

Q. I was asking you if in the course of business in your bank down there, whether a check endorsed like that one is would be paid?

A. I think it would, sir. If I was positive as to the signature of the witness on there I would pay it. If I was thoroughly familiar with the signature of the witness I would pay it.

Q. Were you thoroughly familiar with the signature of Mr. Humes?

A. Yes, sir.

Q. And he is the witness on there?

A. Yes, sir.

Q. The name of the payee, the mark, is that in Mr. Humes' handwriting, too?

A. Yes, sir.

Q. And if Mr. Humes' name was on there as a witness to that mark, in the course of business in the bank there, you would pay a check like that?

A. I think so; yes, sir; unless there were some circumstances about the check that would rouse my suspicions.

Q. If Mr. Humes had brought that check himself?

A. I would have undoubtedly have cashed it.

Cross-examination by Judge GREER:

195 Q. That check is payable to Joshua Haynes, Mr. Harris, is it?

A. Yes, sir.

Q. There is a circumstance about that check which would arrest

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your attention, from the fact that it has a cross-mark on the back of it, isn't there?

A. Yes, sir.

Q. I think I understand you to say that anything for as large an amount as $250, that you would probably have required Haynes to bring Mr. Humes over to identify him?

A. Yes, sir.

Q. You have stated that for small amounts, like $24, that you have seen, that you would simply have cashed them, knowing the signature?

A. Yes, sir.

Q. Your memory does not serve you about this particular check, does it?

A. No, sir; it does not.

Q. This Union savings bank is in the same building as the First National bank?

A. Yes, sir.

Q. Are you acquainted with Mr. Brooks, the teller there?

A. Yes, sir.

Q. Can you state from looking at that check the day it was paid?

A. No, sir; I could not.

Q. If you were to see Joshua Haynes now and have an opportunity to look at him, would that probably refresh your memory enough to know whether you had ever seen him before?

A. I would not know him.

196 Q. If you were told that he had opened an account with the Union savings bank in this same building and kept a bank account for a month or two, would that assist you so you could recognize him as the payee of that check?

A. No, sir; it would not. I probably saw him for that one time only, and then did not pay much attention to him.

Re-examined by Mr. SIMONTON:

Q. You say that in one of those checks involving a large amount you might probably require the pensioner or the payee to be present himself and identify it?

A. Yes, sir.

Q. You do not say that that was required in regard to this check?

(Objected to by counsel for defendant as repeating what was gone over in chief.)

A. No, sir.

Q. And you do not say that it was not required?

A. I said I did not remember whether I required it in that case or not.

Q. I understand that you say now that for all small checks—$36 and like that—you would pay them?

(Objected to by counsel for defendant as repeating the evidence.)

SH POOR COPY

The COURT: He stated on the original examination that
197 a small check of $20 or $25 he would cash on the faith of Mr. Humes' name as a witness; and then Judge Greer asked him the same thing and he repeated it, so there is no doubt about that.

Mr. SIMONTON:

Q. How large a check now—what size of check—according to the course of business, would you have cashed in that way?

A. I would say nothing over $100.

Q. I want to ask you, refreshing your memory, if you have not within the last ten days paid on the endorsement of Anthony Stevenson?

(Objected to by counsel for defendant as both leading and as stating a special instance, whereas the examination had limited the witness to the course of business at his bank. Objection sustained by the court.)

Mr. SIMONTON:

Q. I want to ask the witness this question, then: I want to ask you if, with Mr. Humes' endorsement on that check, you would have paid it at your bank.

(Objected to by counsel for defendant. Objection sustained by the court.)

Mr. SIMONTON: Could I not show that the witness himself in his general statement misapprehends, to some extent, his course of business and what the course of business in the bank is?

198 The COURT: You have introduced the course of business in the bank yourself, and the witness states what his course of business was. Now, in a re-examination it seems to me that the tendency of your question is to undertake to show that your witness is mistaken. I will let the course of business come in because of its analogy to a custom, but I do not think that instances are competent.

Mr. SIMONTON: Not by way of illustrating that course of business?

The COURT: No, sir.

DOC ANDERSON (colored) was then recalled and further cross-examined by Col. Gantt as follows:

Q. You answered today, I believe, that you stopped to get water or tobacco, you did not know which. Did you not swear on the former trial, when you were examined in this case, "I came home to dinner and I happened to stop by there and stepped in the door and he told me he had drawed it?" Did you swear that on the former trial?

A. I say either dinner or something I went home for. It's been so long it's run through my mind.

Q. Did you swear this on the former trial or not, that you said today?

BLEED THROUGH

199 A. I said either 'backer or water or something. I goes every time I goes with a load I passes my house.

Q. You were asked, "You just drove by there?" Answer. "I live there and I stop by there and get a good dinner." Q. "And you were in a hurry?" A. "Yes, sir." —"You went in and saw him counting something on his knee?" A. "Yes, sir." Q. "You looked at it and then went on off to your work?" A. "After I got my dinner."

Did you swear that before?

A. I said either dinner or 'backer or something I went there for. I said that today. I disremember my memory.

Q. It has not been more than ten days since you were examined.

A. It was either 'backer or dinner before.

The COURT: The question is not now how it was. This is not it. But did you swear that as he reads it to you?

A. I don't remember, Judge. I said I either stopped there to get dinner, because sometimes 'bout three or four o'clock——

Mr. SIMONTON:

Q. So you don't say positively whether you did swear that?

A. It was either dinner or 'backer or something.

Q. Do you remember what you did swear about it on the former trial?

200 A. I told 'em either dinner or water or something; I can't say which.

W. M. RAGSDALE, a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. What employment have you in the Government service, if any?

A. I am a special examiner of the board of pensions.

Q. Do you know the handwriting of the defendant, Lowry W. Humes?

A. Yes, sir.

Q. Have you seen him sign his name?

A. Yes, sir; and had him identify his signature to other papers, or to one other paper.

Q. Has much of his handwriting come under your observation in your official position?

A. A great deal of it.

Q. Mr. Ragsdale, when we examined you before noon I think you stated that you knew the handwriting of Mr. Humes.

A. Yes, sir.

Q. I will ask you now if you had a file of papers in the Bloodson case.

A. Yes, sir; I have.

Q. How did those papers come into your possession?

A. They were sent to me by the Commissioner of Pensions
201 in the course of official business, in the official envelopes.

Q. And these checks are vouchers that have been introduced here? Where did they come from?

POOR COPY

A. They were received in the same manner by me from the Commissioner of Pensions.

Q. Now, in that file of Bloodson's are there some papers in there during the course of the pendency of those papers that were written by the defendant Humes—in his handwriting?

A. Yes, sir.

Q. I wish you would state to the jury, in order that they may understand them, something about the course of business in the pension cases. What is the first step in it?

A. The filing of a declaration.

Q. Where is that filed?

A. With the Commissioner of Pensions.

Q. Where is that prepared?

A. Prepared wherever the claimant might be.

Q. In that declaration is there an attorney set out or a power of attorney to any one? You have got some declarations there?

A. Yes, sir; usually in the body of the declaration space for the appointment of an attorney in the case. When an attorney goes into this business he generally prints his blanks of the form
202 prescribed by statute and generally prints his own name in there, because he will use those blanks.

Judge GREER: I do not see the object of this evidence. The defendant did not claim that he was an attorney and you do not claim it.

The COURT: We will assume that he will make it competent.

Mr. SIMONTON:

Q. After an application is filed what business then has an attorney to do or what does he do in the course of his business?

Judge GREER: This witness is not an attorney.

Mr. SIMONTON:

Q. Are you familiar with the business?

A. Perfectly.

Q. What opportunity have you had of becoming familiar with the business?

A. I have been connected with the Pension Department either as attorney's clerk or commissioner for eight years.

Q. Where were you during that period?

A. I was in the department, at Washington, two different times, covering a period of two years and a half, and have been in the field service as special examiner two years, and I was with M. S. Stevenson & Co. almost four years as pension attorneys.

203 Q. I was asking what steps are pursued.

A. As far as the attorney is concerned, he is usually called upon by the department for the necessary evidence.

Q. Is a correspondence kept up between the department and the attorney?

A. And the attorney of record; yes, sir.

Q. In the Bloodson case is there any correspondence on file in

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those papers which you have which you recognize as in Mr. Humes' handwriting?

A. Yes, sir.

Q. Let us see it.

A. Here are some postal cards.

The COURT: You offer those now to show that he was representing Bloodson?

Mr. SIMONTON: Yes, sir; that he was acting in the case as attorney.

Judge GREER: We claim that he was acting as United States commissioner and administering oaths; that he had no agency in the business.

A. These papers, some of them, are in Mr. Humes' handwriting and from their tenor emanated from Mr. Humes.

(Counsel for defendant objected to the words "emanated from Mr. Humes" as incompetent. No ruling of the court.)

Mr. SIMONTON:

Q. We will identify those when we get to them. You know the handwriting on that postal card?

A. Yes, sir.

204 Q. Whose is it?

A. Mr. Humes'.

Q. This postal card is directed to the Hon. Commissioner of Pensions, Washington, D. C., and is as follows: "Kindly advise me cause of delay in my claim. Isaac Bloodson, 928,075, 13 Madison St., Jan. 24, 1894, L 49, U. S. K. T." That, you say, was Mr. Humes' handwriting.

A. Yes, sir.

Judge GREER: We object to the reading of that in evidence. You were passing it to him for the purpose, I thought, of identification. I do not see, whether it was or was not Mr. Humes' handwriting. that it is competent to establish any agency. Bloodson confessedly does not know how to write.

The COURT: For what it is worth it may go in. That is competent.

(To this counsel for defendant excepted.)

A. (Taking another postal card.) This is in Mr. Humes' handwriting, addressed to the same, and reads, "Advise me as to cause of delay in my pension. P. O., care of Deadrick & Co., E 49, Sept. 9, 1893." And then, in pencil, on the margin, is, "Certificate 690,909."

Col. GANTT: What is the date of that, before passing?

205 A. September 9th, 1893, in Mr. Humes' handwriting. The pencil marks here I cannot identify as being Mr. Humes'. I have an idea as to how they came there, but I shall not say. Here is another postal. 928,075, L 49, Dec. 5, 1893, and it also bears in front of the number given here "K. T. F," and in red ink, which I do not recognize as Mr. Humes' handwriting. The stamp of the

POOR COPY

Pension Office shows it was received in the Pension Office on December 8th, 1893.

Q. Is that all of it?

A. All except that in red ink.

Q. What is the paper you now have in your hands?

A. This envelope contains a typewritten letter from W. H. Childs, of New Orleans, dated March 5th, 1894, and in the corner here is "L 49, U. S. K T," which is in Mr. Humes' handwriting. That shows that it was received in the Pension Office March 8th, 1894.

Judge GREER: You testify that that is Mr. Humes' handwriting?

A. I say that it is Mr. Humes' handwriting.

Judge GREER:

Q. Look at those two and compare them. Do you see the slightest similarity?

206 The COURT: It was only abbreviations that he said were.

Judge GREER: I want him to look at it before he speaks positively about it.

(The witness here compared the two papers as requested.)

A. Of course, I did not see Mr. Humes write this on there, but it is very similar to his handwriting and I should judge that he did it.

Judge GREER: We object to this at all. It purports to be a letter from W. H. Childs, of New Orleans, La., and is typewritten.

The COURT: What is your theory about that—that Mr. Humes, in fact, wrote it in the name of these gentlemen?

Mr. SIMONTON: Yes, sir; the post-office address, 13 Madison street, Memphis, Tenn., has been shown.

(The court overruled the objection; to which counsel for defendant excepted.)

Mr. SIMONTON:

Q. What else have you there?

A. I have two postal cards and a letter, all typewritten, one similar to the one just shown, the only writing on it being "L 59, U. S. K T," the services of the soldier. This is all that is in writing on it.

Q. Read the card.

207 A. (Reading:) "Advise status of claim of Isaac Bloodson. This is the 6th request for status of the past year without eliciting any reply or apparent notice of the same. Yours, W. H. Childs, successor to Deadrich, Powers & Co." Stamped: "September 20th, 1894." Post-office, here, 17 West Court street, Memphis, Tenn. That is addressed to the honorable Commissioner of Pensions, Washington, D. C., and shows that it was received September 22d, 1894.

Q. Can you tell where it was mailed?

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A. Memphis, Tenn., September 20th, 11 a. m., according to the postmark.

Q. What is that card you have now?

A. I have another postal card, 928,075, signed W. H. Childs; post-office address given, 17 West Court street, Memphis, Tenn. This shows that it was received in the Pension Bureau October 22d, 1894. (Witness here read said card to the jury.)

Q. Is there any mark on there that you recognize as Mr. Humes' handwriting, anywhere? I believe you say that is printed?

A. Yes, sir; that is in print. No, sir; there is no hand-
208 writing that I can identify on this. There is some handwriting on the face of it here that I cannot identify.

Q. What else have you there?

A. I have a typewritten letter addressed to the honorable Commissioner of Pensions.

The COURT: You say there is no part of that postal card that you can identify as Mr. Humes' handwriting?

A. No, sir.

The COURT: Judge Greer, do you object to that?

Judge GREER: Yes, sir.

The COURT: That objection is sustained.

Judge GREER: It is only those in which he testifies that there is an identification that your honor will admit?

The COURT: Yes.

Col. GANTT: Is that typewritten?

Mr. SIMONTON:

Q. Can you identify that from any marks on it as Mr. Humes'?

A. Well, no, sir; I cannot.

Q. What is it?

A. It is typewritten and has the post-office of Isaac Bloodson, who makes his mark, 17 West Court street, Memphis, Tenn.

Q. What is the date of that?

A. It is dated January 7th, 1895.

Q. Do you know who occupied the office at No. 17 West Court street at that time?

A. Mr. Humes had his office there at that time.

209 Judge GREER: Well, the witness does not know that.
The COURT: He says he does.

Judge GREER:

Q. You knew nothing about what was in Memphis, then?

A. I beg your pardon, Judge. I was here in September, 1894, and had several occasions to go to Mr. Humes' office.

The COURT: Well, now, you may introduce that with that circumstance. That is admitted, gentlemen, and its effect depends on whether you believe it was written by Mr. Humes in fact. It is admitted with the circumstance that it has his office number.

POOR COPY

(Said letter of January 7th, 1895, was then read to the jury by the witness.)

A. That stamp shows that it was received in the Pension Office January 12th, 1895.

Col. GANTT: We do not agree that that is competent, if your honor please. It is not relating to this transaction, and is after it.

The COURT: It is offered for the single purpose of showing that he was aiding this man in the prosecution of his claim, and for that purpose only is admitted.

Mr. SIMONTON:

210 Q. Have you any more in these particular cases?

A. No, sir; I don't think that I have. I have here a copy of a letter which was mailed, according to this copy, to W. H. Childs, Memphis, Tenn., dated November 14th, 1894, and the memorandum on the back of it here says: "Nov. 14th, 1894. W. H. Childs informed as per inclosed slip. W. A. H., examiner."

Q. What was that in answer to?

A. It was in answer to these communications.

Judge GREER: You mean it appears to be so?

A. And from my knowledge of the course of business there, I am prepared to say that it was so.

Col. GANTT:

Q. Have you the original document sent to Mr. Humes?

A. No, sir; I have not.

Col. GANTT:

Q. Or sent to the party, Childs?

A. No, sir; I have not.

Col. GANTT:

Q. That which you have there purports to be a copy?

A. A copy kept on file of what was sent to them that day. We have a great many printed slips which, when we call for evidence, we have a few little blanks to fill up in the brief what is required, but frequently we are required to write letters which are not

211 in the usual course of things, for which we have no printed circulars, and when a letter is written careful examiners usually keep a copy of it to file with the papers, if anything should come up, to show what was written to the party that day, and on the back of this is the endorsement, "W. H. Childs informed as per enclosed slip," of even date.

Col. GANTT:

Q. So they can keep track of it?

A. Yes, sir; of the prosecution and progress of this claim.

Col. GANTT:

Q. Where is the original of that?

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A. The original appears to have been mailed to W. H. Childs, Memphis, Tenn., November 14th, 1894, of which this is a copy.

Judge GREER:

Q. Who purports to make that?
A. This purports to be made by the examiner who wrote it.

Judge GREER:

Q. Are not those letters letter-pressed?
A. No, sir; they are not in the special examination division. Where they have correspondence emanating directly from there to people there is a system by which they keep copies; but letters to attorneys are written upon ordinary letter paper for the purpose, and as a rule copies are not always kept; but in important
212 cases examiners make a copy of it.

Col. GANTT:

Q. Is the man who wrote that living or dead?
A. I could not tell you, sir. I could not even tell you his name, except William A. Hill.
Q. And you really do not know the man?
A. No, sir.

Col. GANTT:

Q. And do not know whether he is living or dead?
A. No, sir.

Col. GANTT:

Q. And do not know the handwriting?
A. No, sir.

Mr. SIMONTON: In response to one of these other letters, we would like to introduce it, if it — competent.
(Objected to by counsel for defendant as incompetent. Objection overruled by the court; to which counsel for defendant excepted. Said copy was then read to the jury by witness.)

Mr. SIMONTON:

Q. By whom is that signed?
A. It is over the signature of the Commissioner of Pensions, by one of the clerks.
Judge GREER: Does that purport to be there?
A. No, sir; not on this paper.

Col. GANTT: And this is not even a suit that is being prosecuted, but one prosecuted long before to a final termination?

213 Q. What is that you have now, Mr. Ragsdale?
A. This is what purports to be an answer to that letter. It is typewritten and emanates from W. H. Childs, post-office here, 17 West Court St., Memphis, Tenn.
Q. Now, you may read that.

POOR COPY

(Objected to by counsel for defendant as incompetent. Objection overruled by the court; to which counsel for defendant excepted. The letter of November 24th, 1894, was then read to the jury by the witness.)

A. Here is a copy of the letter referred to, dated Knoxville, Tenn., November 23, 1894.

(Said letter was here read to the jury by the witness.)

Mr. SIMONTON:

Q. Mr. Ragsdale, have you a letter which concurred with these, about this time, which the defendant, L. W. Humes, addressed to one Abram Marsh in regard to his operations here in the city in regard to pensions?

Judge GREER: We cannot see any predicate upon which that would be competent.

Mr. SIMONTON: If in that letter he explains his manner of running his business here and his connection with the Pension Department, it is highly competent. You had such a letter here before, Mr. Ragsdale?

214 The COURT:

Q. Has that letter been admitted heretofore over your objections?

Col. GANTT: No, sir; there was no objection made before. The testimony took, if your honor please, a wider range before than we want to give it this time.

(After argument by counsel, the court admitted the letter; to which counsel for defendant excepted.)

Mr. SIMONTON:

Q. Is that in type?

A. In the handwriting of the defendant, Lowry W. Humes; dated January 4th, 1894, and stamped in the corner, in stencil, "L. W. Humes, law office, 15 Madison St., Memphis, Tenn.," to Abram Marsh. Then here is one dated December 6th, 1895, stenciled in the corner, "L. W. Humes, law office, 15 Madison St., Memphis, Tenn.," also to Abram Marsh. Another to the same party dated November 10th, 1893, and stenciled in the corners the same as the others; also one dated September 15th, 1893, to Abram Marsh, and stenciled in the corners like the others.

(The said letters were then read to the jury by witness.)

The COURT: Now that batch of letters is admitted only in
215 so far as it speaks of his relation to Childs, and the remainder of it is excluded. You understand that, gentlemen of the jury, that so much of it as explains his relation to Childs by saying that he is in charge of the office here at Memphis is admitted and all the rest excluded.

Mr. SIMONTON:

Q. What have you there, Mr. Ragsdale?

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A. Three postal cards which I obtained from Noah Crawford. They are in the handwriting of the defendant, Lowry W. Humes, and one of them bears his signature, and two of them the signature of Deadrick & Co.

Q. That is neither to Bloodson, Anderson, nor Haynes, is it?

A. No, sir; this is to Noah Crawford.

Q. A pensioner, and written from the same office here by the defendant?

Judge GREER: There is no proof that he is a pensioner, and it is nothing in the world but a postal card addressed to a man who has no connection with this case.

Mr. SIMONTON: I think those are competent to show his course of business.

The COURT: You mean he in fact writing them and signing the name of Childs & Co. to them?

216 Mr. SIMONTON: Sometimes his own name and sometimes theirs.

(After argument by counsel the court sustained the objection, to which the district attorney excepted.)

Q. Have you any communication between him and William Anderson?

A. Yes, sir.

Q. That is in the William Anderson case, is it?

A. Yes, sir.

Q. In whose handwriting is that?

A. That is in the handwriting of Mr. L. W. Humes.

Q. How is it signed?

A. Deadrick & Co., 13 Madison St., Memphis, Tenn.

Q. To whom is it addressed?

A. It is addressed to William Anderson, and dated September 15th, 1893.

(Said letter was here read to the jury by the witness.)

Q. What is that you have now?

A. In the Joshua Haynes case I have two postal cards which were given to me by Joshua Haynes. They are typewritten and signed "Yours, &c., L. W. Humes," and reads as follows: "Come up and see about your papers." And the date is in pen and ink, "4, 5, '94."

Q. What would that mean?

217 A. I suppose April 5th, 1894. I read the one and gave the other date to it. This is 4, 17, '94—all typewritten: "Come to the office and see about your papers. L. W. Humes." These are addressed to "Joshua Haynes, city, 72 Front St.;" and I have here a typewritten slip dated March 4th, 1895. This was handed to me by the pensioner Joshua Haynes.

(Said slip was here read to the jury.)

Q. What name appears signed to those relating to the pension claim of Joshua Haynes?

A. Some of them are signed "W. H. Childs & Co., New Orleans,

POOR COPY

La., Memphis post-office, 13 Madison St., Memphis, Tenn., successor to Deadrick & Co., H. C. & F. H. Powers;" and some of the postal cards are in the handwriting of Mr. Humes and addressed to Joshua Haynes. They are of the following dates: August 1st, 1894; January 8th, 1894; September 2d, 1893; September 4th, 1893; June 12, 1894; February 24th, 1894.

(All of which were read to the jury.)

Cross-examined by Col. GANTT:

Q. Mr. Ragsdale, you are special examiner, you say?

A. Yes, sir.

218 Q. Your business takes you over a pretty wide field?

A. Yes, sir.

Q. Do you range from here to New Orleans?

A. No, sir.

Q. How far do you go?

A. My headquarters are in Memphis, Tenn., *any* my territory in Shelby county, and—I cannot just now say how many counties, but almost twenty counties, in North Mississippi—over to the Alabama line.

Q. Your examinations are secret, are they?

A. Not altogether; no, sir.

Q. How much are they secret?

A. Well, I could not tell you just what proportion of them, Col. Gantt. The main body of our work is what we call merit work—that is, investigating the merits of the pensioners' claims, to see whether or not the pensioners are entitled to the pensions they claim. Then the other part of what is called on the road—is what we call criminal work—detecting any violations of the pension laws, &c.

Q. It is really a secret inquisition, is it not?

A. We usually take it *ex parte*.

Q. The fellow that is charged is not there?

219 A. No, sir.

Q. And the witnesses that you examine are generally examined in some room or place where you carry them?

A. Wherever I find them.

Q. And if you find a man willing to let you take his statement in writing you take it?

A. I take it anyhow.

Q. The witnesses are not sworn?

A. I generally put them under oath.

Q. Have you any power, Mr. Ragsdale, to swear a man?

A. Yes, sir.

Q. When there is no case pending?

A. Yes, sir; whenever, in my opinion, I believe there has been an infringement or violation of the pension laws I have a right to put a man under oath and take his deposition.

Q. Any man?

A. Yes, sir.

BLEED THROUGH

Q. Pardon me if I ask if you could, without any inconvenience, put your finger upon some act of Congress which gives your authority to do that.

Mr. SIMONTON: I can do that for him.

The COURT: What is the point in that, Col. Gantt? How does that affect this case?

Col. GANTT: I don't care to press it.

220 (This line of inquiry was objected to by the district attorney and the objection was sustained by the court; no exception by counsel for defendant.)

Col. GANTT: How long have you been in this business?

A. Since September, 1894—since I have been in the field.

Q. What do you mean by being in the field?

A. When we are away from Washington we call it "field-work."

Q. You are a sort of "free lance" and ranger, then?

A. You can put your own interpretation upon it, Col. Gantt.

Q. In the discharge of your duties are you alone or do you have assistance allowed?

A. I am nearly always alone.

Q. Are you alone here?

A. Oh, no; there are four of us here.

It was admitted by counsel that it was the course of business prior to May, 1895, to deliver all letters, including pensioners' letters, to any address to which they were sent instead of looking up the pensioners in person.

The Government then rested its case. The following evidence was then introduced on behalf of defendant, being the testimony of each witness examined by def't.

221 The defendant, LOWRY W. HUMES, being first duly sworn, was examined by Col. Gantt as follows:

Q. What is your name?

A. Lowry W. Humes.

Q. You are the defendant, are you?

A. Yes, sir.

Q. Are you a pension attorney?

A. No, sir.

Q. Have you ever been?

A. Never.

Q. Do you know William Anderson?

A. Yes, sir.

Q. About how long have you known him?

A. I have known him since September of 1893; maybe some short while before that; six months, or something like that.

Q. Will you look at this paper and state what it is?

A. This is William Anderson's voucher.

Q. What is the date of that?

A. It was executed by him on the 28th day of September, 1894.

POOR COPY

Q. Had he drawn any money before that?
A. No, sir.
Q. Where was that executed?
A. In my office.
Q. Who filled that voucher?
A. I did. I filled in the post-office address and typewrote his name and let him make his mark, and signed my signature and put the date to it.
Q. Who put the amount in there?
A. Mr. Carpenter. That was done at the pension office at Knoxville.

222 Q. Then when you received that voucher it contained the amounts?
A. Yes, sir.
Q. What is that amount?
A. $546.40.
Q. Now, you say that William Anderson executed that? What do you mean by executing it? What did he do?
A. I mean to say that William Anderson came in my office and——
Q. I asked what he did in executing that paper?
A. He touched the pen to make his mark, and I read him the paper and then administered the oath to him.
Q. Who were the witnesses, if any?
A. The colored boy, W. G. Franklin, and a man by the name of S. Bettis.
Q. State whether or not you were present when they witnessed it.
A. Yes, sir; Frank was in the office.
Q. Were Bettis and Franklin present?
A. Yes, sir.
Q. State whose mark that is. Who made that?
A. William Anderson touched the pen to make it.
Q. Was any oath administered to him?
A. Yes, sir; he was sworn to it; sworn that he was the identical William Anderson.
Q. Read that part.

(The witness here read the voucher and certificate.)

Q. State whether or not that paper was read to Anderson.

223 A. Yes, sir; and explained to him fully. The calculations on the back of it in pencil will show it all.
Q. Whose handwriting is that in?
A. That is done at the Knoxville office.
Q. Was that read to him, too?
A. Yes, sir; and his pension certificate, too. They were all opened in my office on the morning of the execution of this voucher in his presence and at his request, and everything on the face and on the back of it was read to him. Anderson was first in my office about this thing. I first got news of it about the 21st of September, and wrote to him. They took it to Raleigh on the 22d. He was first in my office on the 24th of September, and I then told him these

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papers had gone to Woodstock, Tenn., his original post-office, and on the 24th of September I wrote to the postmaster at Washington to please send his papers to me at Anderson's request and let him make a mark to it, and in answer to that all these papers addressed to William Anderson came to 17 West Court street.

Q. You have only one paper in your hand?

224 A. But his pension certificate was with it, telling him that W. H. Childs was attorney and a $10.00 fee was due.

Q. You wrote his address yourself—it was to come to your office?

A. Yes, sir.

Q. And that, you say, was at his request?

A. At his instance and request.

Q. Now, after you had prepared that paper in the way you have explained, what did you do with it?

A. I put it in an envelope addressed to Carpenter at Knoxville, Tenn., with a two-cent stamp on it, and gave it to William Anderson to mail, and he mailed it.

Q. About how long after that before you got a response?

A. My recollection is that Anderson's check for this money and his November voucher came the day that he got the money—the morning of Monday, October 8th, 1894.

Q. Then did you get a response to that?

A. Yes, sir.

Q. Look now and see whether this is the check that came in response to that.

A. Yes, sir; this is the check that came in response to that voucher.

Q. Please read it.

A. No. 743,156, October 3d, 1894, for $536.40, payable to William Anderson, and is signed by D. A. Carpenter.

Q. That, you say, came on what day?

A. It got to my office on Monday morning of October 8th, 1894.

Q. Was Anderson there on that day?

225 A. He came there that morning about 10 or 11 o'clock and the envelope that contained this was opened in his presence, the check fixed up and delivered to him.

Q. State whether or not he had been in a state of expectation about getting it.

A. I had told him on the 24th of September that it had been granted, and on the 28th he had executed that voucher.

Q. Was he expecting it?

A. Oh, yes, sir; he knew it was coming and was looking for it.

Q. What was done? You opened the papers, you say.

A. Yes, sir; in his presence.

Q. What else came in the envelope?

A. The voucher of November 4th, 1894. He was entitled to $36.00 more.

Q. And that check and the November voucher constituted all that was in the envelope?

A. All that was in that envelope. A. Yes, sir.

POOR COPY

Q. After you got that paper what was done with it?

A. When I opened that envelope at his request I took this check out at his request and he touched a pen and made that mark. I witnessed it myself, and had a young white man in my office, Mr. Purcelle, to witness his mark, and I delivered him the check.

Q. What was then done?

A. I made that old fat colored man, Cornelius Sanderlin,
226 show this man the Mechanics' savings bank, on the corner of Main and Madison.

Q. To go with this man Anderson?

A. Yes, sir.

Q. You told him to go with him?

A. Yes, sir.

Q. When you made that suggestion or gave him that instruction what was done?

A. He went out of the office with Sanderlin.

Q. Did you see him any more that day?

A. No, sir; he left his certificate and voucher on the desk and all his papers. He just took this check off with him.

Q. What became of them?

A. I just put them in the envelope and put them in the desk there.

Q. You saw him no more that day?

A. No, sir, and never saw him any more.

Q. Never mind that. About what time in the day was it when this endorsement was made on that?

A. About 10 or 11 o'clock, is my recollection.

Q. You know Sanderlin, do you?

A. Oh, very well.

Q. State whether or not he is a pensioner.

A. Yes, sir.

Q. Did you pay Anderson any money in your office upon that occasion?

A. Not one cent.

Q. That was what was done in regard to this?

A. That was what was done, and that was all that was done.

Q. Is that check for the full amount that he was entitled to?

A. Less the $10.00 for the attorney.

227 Q. I asked if it was for the full amount he was entitled to.

A. Yes, sir.

Q. Who filled that amount in there?

A. Mr. Carpenter. It was done in Mr. Carpenter's office.

Q. And all that you did was to assist him in the endorsement of the check?

A. That was all.

Q. And when that was completed you delivered it to him?

A. Yes, sir.

Q. And Sanderlin went with him out of your office?

A. Yes, sir.

Q. What did you get for your services in regard to that check, if anything?

BLEED THROUGH

A. I got a notary fee of 50 cents for the execution of the voucher. I got nothing for the check.

Q. When did you get that 50c.?

A. My recollection is that Sanderlin brought it back to me.

Q. When did he bring it back to you?

A. When he took the old man to the bank and he got the money he brought the 50c. back to me.

Q. And you saw nothing more of him then?

A. No, sir.

Q. Did he know the amount that was coming to him?

A. Yes, sir.

Q. Besides the expression of the amount in the voucher and in that check, had you ever talked to him on the subject prior to that time?

228 A. Yes, sir; I talked to him; I read him the certificate that tells he was entitled to $12.00 a month from the 18th day of October, 1890.

Q. Had you ever prior to that time talked to him on the subject of about how much he would get?

A. Oh, yes, sir; I told him that at the rate which they had given him it would be about $500 or $600.

Mr. SIMONTON: I wish you would designate the time and place of the conversation.

Col. GANTT:

Q. Can you name the time and place when that conversation took place?

A. I recollect we talked it over fully Monday morning, September 24th, the first time I saw him after his pension was granted, and then we read and talked it over on the 28th of September, when we executed this voucher.

Q. Do you know the pensioner Isaac Bloodson?

A. I know him; yes, sir.

Q. Did you procure his pension certificate or were you his attorney?

A. No, sir.

Q. When was that pension certificate in fact secured?

A. On December 11th, 1891, was when it was granted.

Q. Do you know whether or not it was lost and he had trouble about it?

A. I know that he swore that he lost it.

229 Q. In the case of a lost pension certificate what has to be done?

A. You have to make application for a duplicate, to state that it is lost, and ask them to grant you a duplicate.

Q. Was that done in his case?

A. Yes, sir.

Q. Now, then, you say he made application for a duplicate?

A. Yes, sir.

Q. Do you know whether or not he got his duplicate?

A. Yes, sir; he did.

H POOR COPY

Q. State whether there is any other sort of paper besides a duplicate that is given in case of a lost certificate.

A. I swore him to the application; that is how I know of it.

Q. Is there some other paper that can be employed and is employed, and, if so, what, in the case of a lost pension certificate, before the duplicate is issued?

A. We call it a permit or permission to draw without a certificate.

Q. Do you know whether or not Bloodson has such a paper?

A. I know he did have it. I know he made the first draw on a permit to draw.

Q. How do you know?

A. I am the man that made the statement for him that it was lost, and asked that a duplicate be issued or a permit to draw,
230 and the Commissioner sent him a permit first and a certificate afterwards. I swore him to the application. I administered the oath to him.

Q. Did you do these things as his attorney?

A. I did them as United States commissioner. I simply administered the oath to him according to a form sent me by Mr. Carpenter, the agent at Knoxville.

Q. Did you get anything except the notarial fees?

A. Not a cent.

Q. Did you get any pay whatever as attorney for the prosecution of these claims?

A. Not a cent.

Q. Who got the fee in Bloodson's case?

A. I think Mr. Homer C. Powers in Bloodson's case; his name is on it.

Q. What was done with the fee in that case?

A. It was sent to Powers.

Q. And that was ten dollars, I believe.

A. That was $10.00, under the act of June 27th, 1890.

Q. The whole amount of Bloodson's money was $577, and $10 came off of that? $10 was for the attorney's fee?

A. Yes, sir.

Q. When Bloodson's check came it was for that amount, less the attorney's fee, for $567.20?

A. Yes, sir.

Q. Now, I am anticipating a little, but will ask this: Did you receive a voucher or did Bloodson receive a voucher from the Pension Office?

231 —. He received a voucher and a permit to draw from Carpenter to make that first draw.

Q. How did that come?

A. Well, the original papers had gone to him at White Haven and been lost.

Q. But how did this come to him?

A. It came in an envelope addressed to him at my office, at his request.

Q. How?

BLEED THROUGH

A. Through the mails.
Q. To his address at your office?
A. Yes, sir.
Q. Now, state when it came what was done with it.
A. When it came, as soon as he came in the office, the envelope was opened in his presence, and he executed that voucher that you have there before you.
Q. Is that voucher just like the other that you read—the same in its features as the voucher that you read to Anderson?
A. It is the same, I expect. It names a different man. The rate is the same; the amount is different.
Q. How much is this for?
A. This is $577.20, and executed differently. Bloodson made this on the 10th of December, and it shows where I certify that he has his pension certificate with me. That is erased, showing that he drew on a permit.
Q. That is on the 10th of December, 1894?
A. Yes, sir.
Q. Who filled in the amounts?
232 A. They were filled in at Mr. Carpenter's office at Knoxville, Tenn.
Q. That paper came in with those amounts filled in?
A. Yes, sir.
Q. Read those amounts.
A. That is for $577.20.
Q. State what Bloodson did in making up that paper.
A. I read this paper to him, and he touched the pen and made his mark there to the affidavit and receipts.
Q. Did any one witness it?
A. Yes, sir; W. G. Franklin and E. T. Maynard.
Q. Now, state whether or not Bloodson was aware of the contents of that paper.
A. Yes, sir; I read him this paper and the permit to draw at the time it was executed.
Q. Was the entire paper read to him?
A. Every bit of it.
Q. Is there anything on the back of that paper as to the calculation?
A. Yes, sir; it is the same thing. It is made on them all.
Q. Where was that made?
A. Made at Mr. Carpenter's office, the pension agent at Knoxville, Tenn.
Q. Are you clear and distinct in your recollection that Bloodson knew the contents of that paper?
A. I read it to him, explained it to him, and talked it over to him.
233 Q. Now, when you had thus completed the paper, and it was written and completed, what then was done?
A. With the permit to draw pinned to the face of it, it was put in an envelope addressed to D. A. Carpenter, Knoxville, Tenn., and Bloodson mailed it.

POOR COPY

Q. Where was the response to come to?

A. The response was to come to him, at the office, 17 West Court street.

Q. Your office?

A. Yes, sir.

Q. Did Bloodson know it was so to come?

A. Yes, sir. He asked that it be done that way.

Q. And he took the letter and mailed it?

A. Yes, sir.

Q. With the contents you have spoken of?

A. Yes, sir.

Q. Now, about how long after that was done before you again saw the paper?

A. My recollection is—I know that these papers were in my office on the morning of the 24th of December, 1894.

Q. State how they came back—how they got there.

A. They came in an envelope through the mail, addressed to Isaac Bloodson.

Q. Now, you say, then, they were there on the 24th of December, 1894?

234 A. They came in the morning mail on the 24th, delivered at my office.

Q. Now, was Bloodson there on that day?

A. Yes, sir; he was there during that day.

Q. Well, what occurred?

A. When he came I told him the envelope was there, and at his request and in his presence I opened it, and it contained that check you have there for $567.20 and the voucher for February 4th.

Q. The total sum allowed was $577.20?

A. Yes, sir; and the ten dollars off for the attorney's fee made the difference.

Q. Where did the attorney's fee go?

A. It went to Homer C. Powers, New Orleans, La.

Mr. SIMONTON:

Q. You do not know anything about its going to Homer C. Powers than you saw on that paper?

A. Nothing more than the voucher shows.

Col. GANTT:

Q. You know that you did not get it?

A. I know that I did not get it. The letter of the Commissioner notified me that Powers, at New Orleans, was the attorney, and the check was sent to him.

Q. What did the pensioner, Bloodson, do, and what did you do?

A. I wrote his name on the back of it and let him touch the pen, and he made his mark, and I witnessed it, and W. G. Franklin witnessed it.

Q. After you had done that what became of that paper?

A. It was delivered to him.

BLEED THROUGH

235 Q. To whom?

A. To Bloodson, and Sanderlin was sent to show him the bank.

Q. And Sanderlin went with him to the bank?

A. Yes, sir.

Q. Did you go along?

A. No, sir.

Q. Did you get any money at all in that check?

A. Sanderlin brought me back a notary fee of fifty cents.

Q. With the exception of that, did you get one cent of that money?

A. Not a nickel.

Q. Did you see Bloodson again that day?

A. No, sir.

Q. Did you present that check to be cashed?

—. ——.

A. And got noney of the money?

A. No, sir.

Q. Did you present the check of Anderson to be cashed?

A. No, sir.

Q. Did you get any of the money in that check?

A. No, sir; I was brought back the fifty-cent notary fee, as I told you.

Q. Did you pay Bloodson any money in regard to that *that* transaction in your office?

A. Not a cent.

Q. I believe you have answered in regard to the payment of money to Anderson, and you answered that you did not pay him any?

A. Not a cent.

Q. And the transactions with the others were just the same?

A. The same with each one.

236 Q. Now, then, we will pass from those two.

The COURT: He says he took the same course with all three of these three actions.

A. Except the Haynes transaction. There was some little difference in that.

Col. GANTT: Tell us briefly what occurred in the Haynes transaction. We won't go over the voucher and all that, as the check came back the same as in the other cases. Tell us about that.

A. I was then at 15 Madison street, and the bank that was then cashing these checks was the First National, and I gave that two hundred and thirty-odd dollar check to Haynes and told him that right opposite is the bank. Go there and get your money. He went over there and came back with the check in his hands and says, "Mr. Harris says you must come over there and identify me for this big amount of money," and I said, "All right," and got up and went over there and said, "Mr. Harris, this is Joshua Haynes. I know he is the man entitled to this money," and he counted him out the money, and Joshua said to me while the money was lying

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there at the iron hole where he paid it, "This is more than
237 I want to take home," and Mr. Harris said, "Let him deposit in the savings bank," and I went over to the savings-bank desk——

Q. Explain how far that was from the cashier's stand where the money was paid.

A. I don't think it was further than from here to Mr. Shepherd there (indicating a distance of about — feet).

Q. What was done then?

A. Well, he put out first, as I recollect, $100. Then he said, "No, I'll just deposit $75," and he did deposit $75.00 on the 17th day of April, and Mr. Brooks wrote his name and asked me to witness his mark on the book, and I did.

Q. Who was Mr. Brooks?

A. The teller who issued that little book—the teller at the Union savings bank.

Q. The teller in the Union savings bank and Mr. Harris, the cashier in the First National bank, and both of these concerns under the same roof and in the same room nearby?

A. Yes, sir.

Q. Did you get any part of the money of Haynes?

A. I think he paid the usual half a dollar notary fee, but not a cent else.

Q. Did you cash Haynes' check?

A. No.

Q. And the usual half dollar is what you get for fixing the voucher?

A. Administering the oath to the voucher.

238 Q. For swearing—administering the oath to the voucher?

A. Yes, sir.

Q. That is the fee that is allowed, I suppose?

A. Yes, sir; the notary's fee.

Q. Did you take that check and come over to the bank and cash it and carry the money back and pay Haynes $113.00, or any amount?

A. No, sir; I never put my hands on the check after I delivered it to him.

Q. Did you put your hands on the money?

A. No; the money was paid to him.

Q. Did you get—except the small sum that you have named, of 50c.—did you get any of Haynes' money?

A. Not one cent.

Q. Have you now or have you ever had, growing out of these three transactions that we have explained, any of the money belonging either to Anderson or to Bloodson or to Haynes?

A. Not one cent.

Q. Do you know Mr. Finley?

A. Yes, sir.

Q. State whether or not Mr. Finley ever came to your office with Anderson.

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A. He came to the office with Anderson now and then. He would leave him there and go off.

Q. Did he come with him on all occasions?

A. No, sir.

Q. State whether or not he was in the office at the time that check was made and delivered to Anderson.

A. No, sir; he was not.

239 Q. Was Mr. Laughlin there? You know him?

A. Yes, sir; I know him. Mr. Laughlin was not there, either.

Q. Dd you pay Anderson instead of giving him that check—give him $50.00 in your office?

A. No, sir.

Q. Now, state whether or not you saw Mr. Laughlin and Mr. Finley together—or do you remember about them?

A. I remember that I saw them about three weeks after Anderson got his check. I talked to them for two or three minutes in the back room of my office.

Q. What is Mr. Laughlin's business?

A. Mr. Laughlin is a lawyer.

Q. Do you know whether or not he was the attorney of Anderson?

A. No, sir; I did not know that he was the attorney for Anderson. I knew that he came there and made inquiry about it; that is all.

Q. Now, at the time of that inquiry state whether or not Anderson knew perfectly well the amount that he was entitled to and what he had got.

A. Yes, sir. We had talked to him fully.

(Objected to by the district attorney because the witness did not know what the man knew; no ruling by the court.)

240 A. I talked it over to him. I do not know any further than that, of course.

Col. GANTT:

Q. They came and talked to you?

A. Yes, sir.

Q. Well, did you tell them that he was only entitled to $60, and that you were entitled to——

Mr. SIMONTON: Col. Gantt, I had rather you would ask him what he told them rather than to tell him what to say. I object to your leading him in that way.

The COURT: You may ask it in that form. They have said distinctly that he did tell them that.

Col. GANTT:

Q. Now, did you tell Mr. Finley that he was entitled to only $60, but that $10 of it was due you as your fee?

POOR COPY

A. No, sir; they are mistaken about that. I told them——
Q. Never mind. You did not tell them that?
A. No, sir.
Q. Were you entitled to any fee?
A. Not a cent.
Q. Well, now, then, did you tell Mr. Laughlin, or Mr. Finley in Mr. Laughlin's presence, that he was entitled to $50 and you to $10 for the fee?
A. No, sir. They misunderstood what I said.

Q. How long were they there?

241 A. Two or three minutes. They did not sit down. I was busy in the front room. They came in the back room and said they wanted to speak to me, and in two or three minutes we talked, and they went out. They did not say anything to me hardly and went off.

Q. The object of their visit was to inquire about Anderson's money—the pension that he was entitled to and the amount of it. You understood that?
A. I understood that they made a casual inquiry in a general way about old man Anderson's claim.
Q. And you say that was two or three weeks after he had got the money?
A. Just three weeks to a day.
Q. You say your office was full of people at that time?
A. Yes, sir; I was at work in the front room when they called me in the back room.
Q. And your conversation lasted about the period you have mentioned?
A. Yes, sir.
Q. When it was through what did they do?
A. They seemed to be perfectly satisfied, and went off.

Q. Was anything said in the conversation about the old

242 pension law, what it would allow, and the new pension law, the one under which Anderson got his pension?

A. Yes, sir; I said that he got the maximum amount, $12 a month, and got it from the date of the filing of the application in 1890, and that that was the act of June 27th, 1890; the pensioner got so much a month from the date of the filing of the application—in his case that would be about $550; that under the old law it would have dated back, the original pension law, to the date of the injury during the service, and in that case would be two or three thousand dollars.
Q. How much did you tell them it was?
A. About $550. I told them $12 a month from October, 1890.
Q. What difficulty, if any, was there in getting information as to the amount to which the pensioner was entitled?
A. Not a bit in the world; just to ask and they would give it to you.
Q. To what places could they write and get it?
A. To Knoxville or to Washington, either.

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The COURT:

Q. Was the fee on Anderson's check $10?
A. Yes, sir; all of these were under that act of June 27th, 1890.

The COURT:

Q. If I understand you, you did not have any claim
243 against any of these checks for attorney's fees?
A. No, sir; I did not.

The COURT:

Q. And no claim of any kind except for the fee of 50c., which was paid?
A. That is all, your honor.

The COURT:

Q. I merely ask that to eliminate from the case unnecessary questions. So much has been said about fees.
A. I would like your honor to look at one of those letters showing about the fee.

Cross-examined by Mr. SIMONTON:

Q. Mr. Humes, I believe you are a lawyer?
A. Yes, sir.
Q. There was a pension attorney's office in Memphis by the name of Deadrick & Co., was there not?
A. Yes, sir.
Q. And when was that office established in Memphis?
A. Just after the passage of the act of 1890. This act was passed June 27th, 1890. It was very shortly after that.
Q. Who was their local representative at first?
A. Mr. William Wallace Deadrick.
Q. Does he spell his name the same way as the company?
A. No, sir; he was the son of the chief justice of the court of Tennessee, Deadrick.
Q. How long did he represent them as their local agent?
244 A. Until August 1st, 1893, when they ceased to have an agent here.
Q. At that time where was Mr. Deadrick's office?
A. He had his desk in my office.
Q. Where was your office at that time?
A. 13 Madison street, upstairs over the Scimitar.
Q. He had books in his office, did he not, in which he kept the names of the pensioners?
A. He had one old record there; yes, sir; he kept that.
Q. Any other papers and files in his office?
A. Just the old calls on the different people for proof where they had not executed it.
Q. Who did he turn those books and papers over to when he left here?
A. He just left them in his table there at my office.

H POOR COPY

Q. You took charge of them?

A. I was to receive that mail and be the officer who administered the oath.

Q. You received the mail?

A. Yes, sir.

Q. The mail of the pensioners, and have you kept up that record?

A. I tried to do it. Sometimes I would make the entry and keep it regular; other times I did not.

Q. You had the mail of the pensioners, then, that continued to be sent to Madison street?

A. Yes, sir.

Q. How long did you remain at 13 Madison street?

A. I remained at 13 Madison street until August or Sep-
245 tember of 1894, I think it was.

Q. And then you removed to where?

A. To 17 West Court street.

Q. And you took those books and files to 17 West Court street with you?

A. I took that old desk and everything that was on it over there; yes, sir.

Q. And the pensioners' mail then was addressed to your number at 17 West Court street after that?

A. Yes, sir; those of them who requested it.

Q. After Mr. Deadrick left here that firm of attorneys did not have any other representative in Memphis except yourself?

A. They had no paid agent. I administered the oath.

Q. Did you get no sort of compensation for looking after their business here?

A. Not a single bit; no, sir. Mr. Deadrick got a good salary, but all I got was the notary fee from the people who swore.

Q. I thought you said before, on the other trial, that they paid your rent?

A. They paid for a while after he left the same part of the rent that he paid—for a few months after he left. When he was here he paid $6.25 of the rent and I paid $6.25, and for a few months after he left they continued that and then quit it entirely.

246 Q. At the time of the transactions with these people—Anderson and Bloodson and Haynes—you were in possession of those books at 17 West Court street?

A. Well, Haynes, you know, was at 13 Madison. The one old record was in my office; yes, sir.

Q. The record which you, as I understand, tried to keep up?

A. I did in some cases try to keep it regular.

Q. And the communication between the office at New Orleans and here—did they write directly to pensioners or write to you and you hunt up the pensioners for them?

A. The calls that were made on the people who lived in this district were put in an envelope and addressed to L. W. Humes, commissioner.

Q. Did you not write direct to the department and make calls on

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the department in the name of Deadrick & Co. or Childs, as the case might be?

A. And in the name of the people themselves when they would come in and ask it.

Q. And signed the name of Deadrick & Co. and put down 13 Madison or 17 West Court as the address?

A. I did it in some instances.

Q. Was not that your practice?

A. Well, not a general practice. It was done in some cases.

247 Q. Well, these vouchers for the first payment of Anderson and the second—the first quarterly payment of Anderson and his second payment—came to your office?

A. They first went to Woodstock, and then to my office.

Q. And you sent Anderson word, as you say, that they had come?

A. Yes, sir.

Q. Now, do you say Anderson was in your office on the 24th of September?

A. Yes, sir.

Q. On the 28th of September?

A. Yes, sir.

Q. The 8th of October?

A. Yes, sir.

Q. And the 29th of October?

A. Yes, sir.

Q. Now, who was with him on the 24th of September?

A. I don't think anybody was with him.

Q. On the 28th of September?

A. I don't think anybody was.

Q. On the 8th of October?

A. I don't think anybody was with him on any of these three occasions. As I said, Colonel, sometimes Mr. Finley would bring him there when I was busy and go off and leave him. Now, whether he was with him on any of these three occasions I don't recollect; and sometimes he would come down by himself, like he said.

248 Q. Did not he and Mr. Finley come in there early in October, on a Tuesday, and you tell them that his pension had not yet come; he would have to come back another day soon?

A. No, sir.

Q. And did not they come back on the following Saturday?

A. No, sir; Anderson came on the 24th of September, and I told him his papers were at Woodstock.

Q. Do you say now that Mr. Finley and William Anderson did not come in there on a Tuesday in the early part of October, 1894, and have a talk with you about the pension, in which you said the pension had not yet come?

A. I said they did not come. Anderson came on the 8th, but they did not come.

Q. What day of the week was the 8th?

POOR COPY

A. I think it was Monday.

Q. Well, when they did come around—Mr. Laughlin and Mr. Finley—to inquire of you, did you tell them that his pension money had come that morning?

A. No, sir; they are mistaken about that. I did not tell them his pension money had come that morning; I told them his pension had been granted.

Q. Did you tell them that $60 had come and that $10 was retained as the attorney's fee?

A. No, sir; I did not tell them that; they misunderstood me.

249 Q. Did you say Anderson got $50?

A. I told them Anderson had got about $550; that it was $12 a month from the day he filed his application in October, 1890.

Q. Is it not true that you explained to them why he only got $50?

A. No, sir; I explained why it was he got $12 a month from October, 1890, under the new law, instead of from the time the injury occurred, under the old law.

Q. You had the old man Anderson's pension certificate at that time?

A. His pension certificate and November voucher were sticking in the desk all that time.

Q. Why did you not give him the certificate when they came?

A. Mr. Laughlin just asked me what evidence they had and I told him the papers in the office.

Q. Did you not tell them "My books will show"?

A. No, sir; I told him the old man's papers were there in the office. Mr. Laughlin was mistaken about that. His certificate and voucher were there in the office, sticking in the desk.

Q. Did you tell them that the old man had got his check and you had sent Sanderlin with him to the bank, and he had drawn his whole money?

250 A. I don't remember that I entered into that part of the details. We had a casual conversation of a few minutes, standing in the back room.

Q. It was, however, about old man Anderson getting $50, and they wanted to know why he did not get more?

A. They did not tell me that; did not ask me why he did not get more. They made a casual inquiry of me as to what Anderson's pension was.

Q. What do you mean by "casual?" Did they have any other business at your office?

A. Not that I know of.

Q. They had just walked down there to have a casual conversation—to make a casual inquiry of you?

A. They just called me in there and talked to me five or ten minutes in the back room.

Q. That was the only conversation they had with you about Anderson's pension, was it?

A. Yes, sir; they just asked me about old man Anderson's pen-

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sion, and I just told them he had been granted $12 a month since October, 1890, and got about $550, and I told them his papers were there in the desk; that was the expression I used.

251 Q. This Anderson check for $536.40 appears to be witnessed by yourself and G. H. Purcell. Who is G. H. Purcell?

A. He was a young white man, who was in my office at that time.

Q. Where is he now?

A. I don't know, sir. I have been trying to find his whereabouts, but I have been unable to do it.

Q. Has he been subpœnaed as a witness? How long has he been away from Memphis?

A. I did not know he was go[illegible]il I went to make inquiry about where he was.

Q. What was he doing in your office?

A. He was learning typewriting and shorthand.

Q. Mr. Humes, how many of these pensioners had their mail directed to your office and for whom you filled out vouchers?

A. I should say two-thirds of those whose vouchers I filled out had them directed to the office.

Q. About how many were there?

A. I should think about 150.

Q. Whose vouchers you filled out each quarter?

A. Yes, sir; they were directed to the office. That is what you asked me.

Q. Well, now, do all their vouchers come at one time? These pay-days in the Pension Department are certain fixed days?

252 A. Yes, sir; November, February, May, and August; the 4th of each of those months.

Q. When the time of fixing the vouchers would come would a large number of people come into your office?

A. Yes, sir.

Q. Something like 150?

A. I said about two-thirds.

Q. Had your office for their mail number?

A. Yes, sir.

Q. Now, how long a time would it take—would all those people get their vouchers fixed up about the same time, on the same day?

A. I think every one of them on the same day.

Q. A large number of them, 150 or 200?

A. Yes, sir.

Q. You are not able to recollect about each and every one of them, are you; about the particulars of handing the check over to each one of them?

A. Yes, sir; I recollect very well.

Q. Did you take the vouchers and read it over to each one of them?

A. Yes, sir; I took the voucher and laid it down.

Q. How long did it take you to do that?

A. It took two of us to read them; my son assisted me.

H POOR COPY

Q. You took the trouble to read the voucher to each man as he came up, and explained it to them?

A. Yes, sir.

Q. You remember about the details of talking to William Anderson?

A. Yes, sir.

Q. And remember every one of these 150?

253 A. On these regular quarters I don't mean that I made every particular calculation for them like I did for those people who got their first pay.

Q. You think you remember distinctly about Isaac Bloodson, do you?

A. Yes, sir; I remember Bloodson very distinctly.

Q. Were many of these first payments made about the same time?

A. No, sir; not many. They dropped along just like you see them here; maybe about one a month, or one every two months, or something like that.

Q. Have you got any recollection or would you have any recollection about when Anderson's check and voucher came, except from seeing it here?

A. Oh, yes, sir.

Q. How would you recollect that?

A. I would recollect it this way: When I got the notice of the granting of the claim and when I sent for him. I remember that when I got the notice that Anderson's pension had been granted that I did not recollect him at all. I could not call his points to my mind, but as soon as he walked in Monday morning I knew him well.

Q. In what month was that?

A. September.

Q. Had you not sent out for him?

A. Yes, sir; I dropped him a little notice.

254 Q. Who is this man Sanderlin that you say you send Anderson with to the bank?

A. He is a colored boy that waited on me there at the office.

Q. How many colored boys did you have waiting on you?

A. Sanderlin was the man that waited, Franklin was the one that cleaned up the office, and Sanderlin was the one that stayed there all day. Franklin swept the office up and made the fire.

Q. He is one of these men who signed some of these papers—vouchers and checks?

A. Yes, sir; he is the man.

Q. Is it not true that you frequently cashed these checks yourself and paid the pensioner his money when he came?

(Objected to by counsel for defendant as incompetent because it was an inquiry about other matters and other cases and not pertinent to the issues joined here or as to the withholding of this special pension money. Objection sustained by the court; to which the district attorney excepted.)

BLEED THROUGH

Q. Mr. Humes, do you remember when Mr. Finley and William Anderson came in there to your office for his first quarterly payment and the time when you paid it?

255 A. I remember that William Anderson, about the 4th or 5th of November, after he had made his first draw, came in and executed the voucher, and then about the 15th of November he came back to get his second draw; I remember that.

Q. Very well. Now, I will ask you if you did not on that occasion tell Anderson and Mr. Finley that his money had not come—his check had not come—and he would have to come back again.

A. Yes, sir; I think I may have told him that.

Q. Did they not complain that the old man could not come in readily, and did you not tell them that you would give them the money then?

(Objected to by counsel for defendant as incompetent because it was about a different time and different date.)

The COURT: Let him answer that at present under the objection.

A. Will you repeat it again, Colonel?

Mr. SIMONTON:

Q. Did you not, when they were in there, when old man Anderson came in to get his first quarter, in November, did not you tell him he would have to come back again, and he complained about having to come so often, did you not say that you would

256 just pay him the money yourself?

A. No, sir.

Q. And did you not pay him his money then, $35.50?

A. No, sir.

Q. Did you not testify so on the former trial?

A. No, sir; I don't think I said what you have said to me.

Q. I will ask you further if you did not say on that other cross-examination that if Anderson had given you the check you probably did do that.

A. I can tell you what I did say. What I said was that if a proper authority had been given I might be able to do such a thing, under a proper authorization from Anderson.

Q. Well, did not you say that a verbal authority would be all that was necessary?

A. No, sir.

Q. And that you would have acted on that?

A. No, sir; I don't recollect that I used the expression "verbal authority." My recollection about it is that I said on a proper authorization; that is my recollection about it. I have given you my best recollection about it; that is all I can do.

Q. Well, in point of fact, now, did you not pay Anderson

257 that $35.50, and when his check came afterwards that you made his cross-mark on the back of it and had it cashed and witnessed it without his ever coming in again?

POOR COPY

A. No, sir; that is a mistake, Colonel. I did not do that in Anderson's case.

Q. Did not you tell the court, on a direct question from him to you on your former examination?

A. I don't think I did; I don't recollect it.

Q. Did not the court ask you this: "Did you pursue that policy in your office there of accepting that kind of authority and putting the signature on the checks under that authority?" And did you not answer the court, "I did occasionally, now and then?"

A. My recollection about that answer is that I said, I might have done so; that I knew of one occasion where it was done. That is my recollection of it, where there was a power of attorney given to another party to fix a check that way.

Q. Did not the court ask you further on what kind of authority was it?

A. It was on a power of attorney.

Q. And did not you answer, "It was verbal instructions to fix up the papers"?

A. No, sir; my recollection is that it was on a power of
258 attorney, and the man had the power of attorney.

Q. And — not the court ask you further if it was on verbal instructions and you answered, "Yes, sir"?

A. My recollection is that Judge Taft asked me in what case I did it, and I told him the man had a paper purporting to be a power of attorney.

Q. And you answered, "Yes, sir; under his authority for me to do so." And the court further asked you, "Without his presence?" and you answered, "Yes, sir."

(Objected to by counsel for defendant as incompetent, because a question of other matters and transactions. The court ruled that the district attorney might ask the question for the purpose of contradicting the witness as to what he swore on the former trial of this case. To this ruling counsel for defendant excepted.)

Mr. SIMONTON: I would not be permitted to ask the question and then to show the rule of business in his office if he states that he did not do it.

The COURT: No, sir; he has not stated that that was his rule of business at all. He stated distinctly what took place in these
259 particular transactions, and undertakes to give his distinct recollection of that, not from any habit, but as a fact known and recollected by him.

Mr. SIMONTON:

Q. How is it, then, Mr. Humes, that you can recollect the circumstances in detail about the execution of Joshua Haynes' voucher?

A. Because Harris made me come over there to identify him.

Q. I was speaking about the voucher.

A. Oh, he produced the postal card that I had sent him on the day that he executed this voucher, April 5th.

BLEED THROUGH

Q. Do you remember where, under what circumstances, and who was present?

A. My recollection is that he executed it over there at 13 Madison street, up over the Scimitar building.

Q. Now, you say that when the check for $232 was witnessed by yourself and—who witnessed it with you?

A. Franklin; that boy that was there in the office.

Q. W. G. Franklin?

A. Yes, sir.

Q. You say he took that and went to the bank?

A. Yes, sir.

Q. The First National bank, where Mr. Harris is the cashier, the man that was in here today?

A. Yes, sir.

260 Q. It is not true, as Harris states, then, that you went across there and got the money, and that afterwards he and you went across there to make a deposit?

A. No, sir; I went with him, and he made a deposit after he got the money.

Q. Who paid the money to him?

A. Mr. Harris paid him.

Q. $232?

A. And some cents. He took out the exchange, whatever he charged him.

Q. And he deposited that in the Union savings bank, which is in the same building, but a different institution?

A. That is my understanding, but it is in the same room.

Q. He started to deposit $100?

A. Yes, sir; that is my recollection of it.

Q. Did he count out $100?

A. Yes, sir; he took the money from Mr. Harris and walked over there.

Q. And finally did not deposit but $75?

A. Yes, sir.

Q. That was rather a small deposit out of $230?

A. Nearly half of it. He put down nearly half of it first, and then took part of it off.

Q. Did you make any suggestion to him?

A. Not a word.

Q. Did anybody make any suggestion to him?

A. He just said when Mr. Harris paid him the money, "This is more money than I want to take home," and Mr. Harris said, "Mr. Humes, let him make a deposit in the savings bank."

261 Q. Nothing was said about that over at your office?

A. Not a word. I didn't know nothing about his going to deposit—nothing in the world—until Harris gave him the money.

Q. How is it fixed in your mind that the check of Bloodson came on the 24th of December?

A. I just recollect that it was in Christmas—about the day before Christmas—is what fixes that.

Q. How came you to recollect that?

POOR COPY

A. Recollecting the day before Christmas. I had had so much trouble trying to get it for Bloodson.

Q. Do you remember anything that occurred on the day before the former Christmas preceding that?

A. I don't believe I do—nothing specially that I recall just now.

Q. Mr. Humes, there are a number of indictments pending against you in this court, are there not?

A. Yes, sir.

Q. How many?

(Objected to by counsel for defendant as incompetent. Objection sustained by the court.)

Q. Do you know a pensioner named John Wesley?

A. I know a man named John Wesley; yes; I think I know several of them named John Wesley.

Q. One of them got his pension check through you?

262 A. I recollect there is a man named John Wesley that frequently comes to the office and has his vouchers made out.

(Objected to by counsel for defendant as irrelevant.)

Mr. SIMONTON:

Q. I want to test his recollection. When did you get his check?

A. I don't think he got his first payment with me. That is my recollection—that he did not. I feel pretty sure that he did not.

Q. Now, I want to ask you when he executed his voucher.

A. Last?

Q. No; the first one you executed.

A. I cannot recollect that, either.

Q. Can't you recollect who was present?

A. No; I don't know that I can. Yes; I think I can recollect that Mr. Deadrick was one of the people that were present, but that is the first voucher that he made before me. As soon as Mr. Deadrick came to my office all these people that were pensioners he had them make oath before me.

Q. When was the first voucher that he made before you?

A. I think that the first voucher that he made before me was on May 4th, 1893. That is what I recollect about it.

Q. You executed a voucher for him on August 4th.

A. Yes, sir; and executed one on November 5th, 1895, too.

263 Q. Who were witnesses on that voucher of August 4th, 1894?

A. I don't recollect who they were.

Q. You wrote his name and made his mark on the back of the check and witnessed it? Who witnessed it with you?

A. I don't recollect who it was. I have a rather indistinct recollection or impression that it was probably Frank or Will Oliver—one of those tailors. We were there right by a tailor shop, I think, at that time.

Q. On his voucher dated November 4th, 1894? You made his mark on the back of that and witnessed it yourself?

BLEED THROUGH

Col. GANTT: Let him see the paper.

Mr. SIMONTON: I will let him see it after I try his memory.

The COURT: He says he asks him with a view to test his recollection and with no other purpose.

Mr. SIMONTON:

Q. I asked you who witnessed that November check with you.

A. Well, in November of 1894 I was at 17 West Court street, and don't remember whether it was one of the tailors or Frank or my son.

Q. One of the tailors?

A. Yes, sir; or Frank.

Q. Do you remember about reading his voucher to him?

A. Oh, yes.

264 Q. Do you remember about giving the check to him?

A. Yes, sir.

Q. Which check—the August check?

A. Yes, sir.

Q. Do you know a person by the name of J. S. Williams?

A. Yes, sir; that is what I told you. He was one of the tailors.

Q. How many tailors were there?

A. There were—I don't know that I can recollect all of them. I recollect this man Williams was one of them, and a man named Battis, and a man named Young, and Mr. Tunstall was there for a while.

Q. Right on the same floor with you?

A. Yes, sir.

Q. You were in the habit of getting them to witness those things?

A. When I was in the office alone I would get some of them to come.

(Counsel for defendant objected to stating the custom of the office. Objection sustained by the court.)

The COURT: The district attorney says it is offered for the sole purpose of testing his memory and for no other purpose, and I accept that.

Judge GREER: We might ask your honor to limit it to the jury.

The COURT: Yes. Gentlemen of the jury, that is offered solely for the purpose of testing his memory, all that other trans-

265 action, and you will consider it for no other purpose.

Mr. SIMONTON:

Q. Was there anything peculiar about the manner in which he got his check?

A. I do not recollect anything.

Q. Anything out of the usual way about it?

A. Nothing that I recall just now; nothing that I remember just now. I will frankly tell anything that I recollect, but I do not recollect anything unusual about it.

POOR COPY

W. G. FRANKLIN (colored), a witness for defendant, being first duly sworn, was examined by Judge Greer as follows:

Q. State to the court and jury your name.
A. William G. Franklin.
Q. Where do you reside, Mr. Franklin?
A. At 269 High street.
Q. How long have you been a resident of Memphis, Shelby Co.?
A. I have been a resident of Shelby county for about 33 years; all of my life, principally.
Q. How old are you?
A. I am 36 years old.
Q. You came from Fayette county to Shelby?
A. Yes, sir. I was born in La Grange.
Q. You were born a slave, I believe?
A. I was born November 30th, 1859.
Q. You are acquainted with the defendant, Mr. L. W. Humes?
A. Yes, sir.
266 Q. What connection, if any, did you have about his office or the building there with regard to his affairs or business?
A. I never had any particular connection with his business. Some one would come in with their check. He would get me to witness it.
Q. You were the janitor of the office in which he stayed?
A. Yes, sir.
Q. How long have you been a janitor here in Memphis?
A. [illegible]bout 12 years.
Q. Yo[illegible]ave worked for a number of lawyers in that time?
A. Yes, sir.
Q. You were not confined to that particular building?
A. No, sir.
Q. Your hours of work are particularly what—when are you busiest?
A. My busiest hours are in the morning and evening; like it was when I used to work for you.
Q. You cleaned up the office in the morning and in the evening saw about the fires?
A. Yes, sir.
Q. The other parts of the day were you much or little about the office of Mr. Humes?
A. Well, I was there along about 12 o'clock; just before I would go to dinner.
Q. I wish you would look at the paper which the marshal
267 will hand you and state whether you ever saw that paper before.
A. (After looking at paper.) Yes, sir; I have seen this.
Q. Do you recognize any signature on that paper; and, if so, whose?
A. I recognize my signature, and I recognize William Anderson's mark.
Q. What is that paper, if you know? What does it purport to be?

BLEED THROUGH

A. That paper is a voucher.
Q. For what amount?
A. It is for $546.40.
Q. You recognize your signature there?
A. Yes, sir; I do.
Q. You said this was a voucher?
A. Yes, sir.
Q. It is for $546.40?
A. Yes, sir.
Q. Now, looking at that paper and looking at your signature, do you remember whether William Anderson, in your presence, signed that paper or put his mark to that paper?
A. He was right there.
Q. Do you know William Anderson?
A. Yes, sir.
Q. What date does that paper have?
A. This paper was here the 8th day of October, 1894, down at the bottom.
Q. See if there is another date on the paper, Mr. Franklin, too?
A. Here is a date up top here, the 18th of October, 1890.
Q. This is about the time the pension was allowed from to when? Read on.
268 A. (Reading:) "To the present time."
Q. You find that it was subscribed and sworn to on the 28th of September?
A. Yes, sir.
Q. Now, from looking at that paper and remembering William Anderson, I will ask you if you witnessed William Anderson's signature to that paper.
A. I did, sir.
Q. You are acquainted with him?
A. I know him when I see him.
Q. Is he a white man or a colored man?
A. He is a dark man.
Q. At the time that William Anderson put his mark to that paper and you signed it as a witness, what was done, if anything, to make Anderson understand it? Was anything? Was it read to him or not?
A. It was read to him.
Q. By whom?
A. Mr. Humes.
Q. Do you know who the other witness on there is—Mr. Bettis?
A. Yes, sir; he is a tailor.
Q. Do you know him personally?
A. I know him when I see him.
Q. Is he a colored or a white man?
A. A white man.
Q. How near was his tailor shop to Mr. Humes' office?
A. Just right across the hall. There was a little hallway there and he was right across the hall.

POOR COPY

269 Q. Was he present when Anderson signed his name? Mr. Bettis was standing there, too.

A. I think he was, as far as I can recollect.

Q. I understood you to say that this paper was read over to Anderson by Mr. Humes.

A. It was.

Q. The amount of money and all was stated in it?

A. Yes, sir.

Q. Now, if you please, look at this paper. I wish you would read that paper to the jury.

A. All right, sir.

The COURT: Is that the Anderson check?

Judge GREER: Yes, sir. Well, we won't go through the reading again, either. Where is the date, at Knoxville?

A. Knoxville, November, 1894.

A recess was here taken by the court until 7 p. m., when the examination of W. G. FRANKLIN by Judge Greer was resumed as follows:

Q. I was asking you to examine a check. You had stated, I think, that the check was payable to William Anderson, and that it was for $536, or some similar amount. Now, you said that you remembered William Anderson?

A. Yes, sir.

Q. And you had signed his voucher?

A. Yes, sir.

270 Q. Just tell the jury in your own way what, if anything, you know about William Anderson, in connection with the check that I had handed to you at the hour of recess.

A. Well, I was in the office at the time and I was called on to attest his signature to his voucher, and when his voucher went and returned he brought it to the office to Mr. Humes, with his check in it, and he got Mr. Humes to fix up his check, and he left there with his check.

Q. Left the office with the check?

A. Yes, sir; left the office with his check.

Q. At the time of his going away, when he went out of the office, did he go out alone?

A. I think not. Mr. Sanderlin went with him.

Q. Sanderlin is the office boy that waits on Mr. Humes?

A. And goes errands for him.

Q. Did you go with Anderson yourself?

A. I never did go with any of them.

Q. So far as you were concerned, the last that you saw of him he went out of the office with Sanderlin?

A. With the check in his hand.

Q. Did you see William Anderson any more after that?

A. No, sir; I don't recollect seeing him any more after that.

Q. That day you saw him no more. Have you ever seen him since that time at all?

BLEED THROUGH

271 A. Yes, sir; I think I have seen him several times. I know I have seen him several times since.

Q. Now, Mr. Franklin, about another man. I wish to ask you if you are acquainted with or did you ever meet or know Isaac Bloodson?

A. Oh, yes, sir.

Q. What sort of looking man is Bloodson?

A. He is a tall man—I suppose about six feet—and he has a grey beard and grey hair.

Q. I wish you would look at that paper I here hand you and state whether your signature is on that voucher.

A. (After looking at paper.) Yes, sir; my signature is here.

Q. Looking at that paper, state whether you have any memory of witnessing Isaac Bloodson's mark on it.

A. Yes, sir; I witnessed his mark on this paper.

Q. Were you present when he made it?

A. Yes, sir.

Q. And that voucher is for how many dollars?

A. This calls for $577.20—this voucher.

Q. Who is the other witness to Bloodson's signature on that besides yourself?

A. Mr. Martin's, I think. I can't see it very well from here.

Q. Do you remember him or did you know him at all—Mr. Martin?

A. Yes, sir; I am acquainted with him.

272 Q. What sort of position did he fill? Do you remember whether he was an officer or not?

A. I don't know whether he was at that time or not, but he used to be a deputy sheriff here some years ago.

Q. Can you tell *where* both of you were present and saw Isaac Bloodson make his mark, looking at that signature and seeing yours there?

A. Yes, sir.

Q. Gentlemen of the jury, I would like for you to examine this. You have already probably looked at it. It has been in evidence. (To witness:) Look at that paper I here show you and state what it is from having seen it.

A. Yes, sir. This is Isaac Bloodson's check.

Q. That check is for how much?

A. This check calls for $567.20.

Q. Who appear as witnesses to Isaac Bloodson's mark on the back of that check?

A. I appear as one of the witnesses.

Q. That is your signature there?

A. This is my signature.

Q. And whose is the other?

A. Mr. Humes' is the first and mine is the second.

Q. Looking at that check, state to the jury what recollection, if any, you have of witnessing Isaac Bloodson make his mark—whether you saw him or did not see him.

H POOR COPY

273 A. He was there and made his mark, and I witnessed his mark on this check.

Q. And that check is of date what, as to the Knoxville date?

A. Knoxville, Tenn., December 16th, 1894.

Q. Now, looking at that check and the voucher that you have seen there, state in your own way to the jury what, if any, recollection you have of Isaac Bloodson in connection with that check.

A. Well, I recollect attesting Isaac Bloodson's mark on this check, and he taken this check and went away with it. That was on the 24th of December.

Q. That he went away with it? Where did he get it?

A. He got the check from Mr. Humes—out of Mr. Humes' office.

Q. And went out of the office with that check?

A. Went out of the office with that check.

Q. Did you follow him or go with him anywhere?

A. No, sir.

Q. You say that was on the 24th day of December?

A. Yes, sir.

Q. Now, that voucher which you have just examined and read and which the jury are now inspecting—the one in the Bloodson case—can you state whether or not that was read over to Bloodson before he signed it?

A. Yes, sir; it was read over to him.

274 Q. Look at this voucher and state whether you are acquainted with any of the signatures on it (handing another paper to witness).

A. Yes, sir.

Q. Is your signature on there?

A. Yes, sir; my signature is here.

Q. Who is the other attesting witness?

A. Will Oliver.

Q. Can you state to the jury who Will Oliver was?

A. Yes, sir; Will Oliver was a office boy of Mr. Parker's, and Mr. Parker's office was adjoining Mr. Humes' office at that time.

Q. What aged man is he?

A. Will Oliver—he is about 20 years old now, I guess.

Q. Is he a white boy, or what color?

A. He is about my color.

Q. Do you remember anything about attesting that paper or not?

A. Yes, sir; I recollect attesting Haynes' paper.

Q. Do you recollect as to whether Haynes signed it or not? Can you tell the jury whether he made his mark on that paper or not?

A. Yes, sir; he made his mark.

Q. Was he a personal acquaintance of yours or not?

A. No, sir; not a personal acquaintance.

Q. Had you seen him before that time?

A. Oh, yes, sir; I had seen him several times before that.

275 Q. How long had you known him before that time?

BLEED THROUGH

A. Well, I was not personally acquainted with him, any more than just seeing him round the office there.

Q. Now, please look at this check that I here show you. How much is that check for?

A. This voucher calls for $242.40, I believe; it is sort of rubbed out.

Q. Looking at that check, do you recognize any signature upon that?

A. Yes, sir; I recognize my signature.

Q. On the back of the check?

A. Yes, sir.

Q. And from looking at that and the signature above it, of Mr. Humes, can you state whether or not you witnessed Joshua Haynes' mark on that?

A. Yes, sir; I witnessed his mark.

Q. Have you any personal recollection of that check and of Joshua Haynes?

A. — recollect when he come in the office and got Mr. Humes to fix up his check, and he went out with it.

Q. Do you remember any more about him? Did you see any more of him afterwards?

A. I think he came back and stated that he could not find the bank, and wanted Mr. Humes to show him the bank.

Q. Do you know whether or not Mr. Humes went out with him?

A. I think he went across and showed him the bank. I was in the office at work at that time, and he went out with him.

276 The COURT: Did I understand you to say that old man Anderson left Humes' office in company with Sanderlin?

A. Yes, sir.

Q. Did he have the check in his hand?

A. He had the check in his hand.

Cross-examined by Mr. SIMONTON:

Q. How long have you been in the employ of Mr. Humes?

A. I have been working for Mr. Humes about eight years, I believe; longer than that; I think it is about nine years.

Q. What sort of employment did you have there?

A. I am janitor. I tends to his office; cleans up his office.

Q. Is that all the employment you have?

A. That is all I have there, to clean his office. Sometimes when I am there he gets me to go out to his house to carry something to his wife.

Q. How much of the day did you spend there?

A. Sometimes about two hours; sometimes not that much.

Q. What time of the day?

A. Part of it, maybe, in the evening.

Q. Are you a pensioner, too?

A. No, no, sir; I am not a pensioner; I am not old enough for one; just a pensioner for my wages, that is all.

Q. What time did you go to his office in the morning?

POOR COPY

A. About six o'clock, especially about this time of year.

277 Q. Then what time did you leave there?

A. Immediately after I got through; get all the fires made and everything straightened up.

Q. Then what time of day do you come back there?

A. I come back there about 10 or 11 o'clock; just before I go to dinner.

Q. How long do you stay?

A. Sometimes probably an hour; sometimes a shorter time.

Q. That is the way you did a year ago?

A. That is the way I have been doing all the while, ever since I have been with him.

Q. What do you do when you are not there?

A. I have somewhere else to work.

Q. How come you to go back to his office when you are done?

A. Like I would go to your office.

Q. You would go there every day?

A. Every day.

Q. And spend from 10 or 11 o'clock till when?

A. About 12.

Q. And go back in the evening again?

A. Go back in the evening.

Q. Do you get no pay for your time that you are there, from 10 to 12 and again in the evening?

A. I get my dues, what is promised me, by the month.

Q. Does he pay you for anything else but washing out spittoons and sweeping up the house?

A. No, sir; not anything else.

Q. How much does he pay you?

A. Pays me $4.00 a month for cleaning up the office.

278 Q. What other work do you do? Where else do you clean up?

A. Well, I tends to the Memphis Business College, over there on Second street.

Q. Then after you get done there you come back?

A. No, sir; I have six or seven rooms to tend to up at the Lee building.

Q. Then you come back to Mr. Humes' office?

A. Or go to the college, either one.

Q. And you get back there about 10 or 11 o'clock?

A. I do get there about 10 or 11, making the rounds like I do at any other place.

Q. Then you stay in there and do whatever he wants you to do?

A. Whatever is necessary.

Q. Is it not a fact that you stay in there a good part of every day?

A. Not a good part of every day.

Q. When pensioners' checks are to be signed?

A. If I happened to be in there when a man wants me to witness his mark; but if I am not there I don't make it a general business to go round there to witness them.

BLEED THROUGH

Q. When a man or Mr. Humes wants you to witness a check?
A. When Mr. Humes asks me in the presence of the man.
Q. When did you get acquainted with William Anderson?
A. I am not personally acquainted with him, but I have seen him round there time and again, till he said he was going
279 to get his pension. I know him when I see him.
Q. Where did you ever see him before he came in there to get his pension?
A. I never seen him anywhere except in that office.
Q. How often did you see him in that office?
A. I have been seeing him in that office—I can't tell how many times I have seen him there.
Q. How many times before he got his check did you see him in there?
A. Yes, sir. I saw him in there when he came to get Mr. Humes to fix up his papers.
Q. When was that?
A. That was last year, 1894.
Q. What time of the year?
A. I can't tell what time of the year.
Q. How many were in there that day?
A. Oh, a great many. I couldn't recollect all that were in there.
Q. Do you recollect any one else?
A. I think I do.
Q. Who else was in there?
A. I think Mr. Martin Somers was in there and Mr. Sanderlin.
Q. Sanderlin stayed there, didn't he?
A. I don't know whether he stayed there all day or not, because part of the time I was not there.
Q. Who asked you to witness the mark on *on* the back of William Anderson's check?
A. Mr. Humes asked me to witness it in the presence of William Anderson.
Q. Are you sure William Anderson was there?
280 A. William Anderson was there.
Q. What time of day—morning or evening?
A. Along about the middle of the day.
Q. Well, about what hour?
A. I suppose between 11 and 12.
Q. Who else was in there at the time Anderson was there?
A. At the time Anderson was there? There was some one else in there; I couldn't recollect who it was.
Q. Can't you think?
A. No, sir; but I know there was some one else in there at the time the old man came in there.
Q. Was Sanderlin in there when Anderson came in?
A. Yes, sir.
Q. What was Sanderlin doing when Anderson came in?
A. He wasn't doing anything, I don't think.
Q. Was he sitting down or standing up?
A. I don't know whether he was sitting down or standing up.

POOR COPY

Q. In which room was he?
A. He was in the same room that I was in.
Q. Which room were you in?
A. I was in the office—in the main office.
Q. That is not where Mr. Humes' desk was and the safe, was it?
A. In the main office, where his desk was, where he sits down and writes.
281 Q. He has a room where people sit till he gets ready to attend to them; a private room?
A. Yes, sir; when he was over there on Court street.
Q. Do you know what day of the month or what month it was you signed that check for William Anderson?
A. It was in October.
Q. On what day in October?
A. When I signed that check? It was along about the 8th of October, according to my recollection.
Q. You never talked to Mr. Humes about these things?
A. No, sir; I never talked to Mr. Humes about it.
Q. And Mr. Humes never asked you if you recollected what day it was?
A. No, sir.
Q. But you recollect that it was the 8th of October?
A. Yes, sir.
Q. Now, what makes you remember that it was the 8th day of October?
A. Well, I happened to be working there that day.
Q. What sort of work were you doing at that time?
A. I had special work. I had to scrub the minolium on the floor for Mr. Humes.
Q. And you were cleaning that off when Anderson came in, were you?
A. Yes, sir.
Q. And when Sanderlin and he went out together?
A. Yes, sir.
Q. Were you cleaning that off when you signed the paper?
A. Yes, sir.
Q. You stopped cleaning the *magnolia* in order to sign the paper?
282 A. No; I stopped when they asked me to.
Q. What were you cleaning it with?
A. I had some soap and some pearline and a brush trying to get the minolium bright.
Q. On the 8th of October, 1894?
A. Yes.
Q. Did you ever clean off the "magnoliam" at any other time?
A. Yes, sir.
Q. When did you clean it off besides that time?
A. I cleaned it off every week.
Q. Do you recollect another single day on which you cleaned it off?
A. I cleaned it off that way on last Saturday.

BLEED THROUGH

Q. That is pretty recent?
A. Yes, sir.
Q. Can you recollect any other day when you cleaned it off?
A. Yes, sir; I clean it off every Saturday.
Q. How did you happen to remember that was the 8th of October?
A. I make it a special duty to clean it off twice a week—Wednesdays and Saturdays.
Q. You say you cleaned it off Wednesdays and Saturdays?
A. Yes, sir; Wednesdays and Saturdays.
Q. What day was the 8th of October, Wednesday or Saturday?
A. I don't recollect what day the 8th of October was on. I was in there on account of some ink being spilt there at the desk and I wanted to get it up.
283 Q. You cleaned it off every Saturday?
A. Yes, sir; that is my day for cleaning it off.
Q. You signed a good many of these checks, didn't you?
A. Yes, sir.
Q. A great many, didn't you?
A. Yes, sir; and every time I signed a check the man was right there present.
Q. I did not ask you that. I was not doubting that. Now, sometimes it was a woman, wasn't it?
A. Yes, sir; sometimes it was a woman.
Q. Do you know Maria Maxwell?
A. I think I would.
Q. Do you know whether you witnessed her check or not?
A. Well, hand me — check.
Q. Oh, no; I want your recollection.
A. I may or I may not.
Q. If you recollect William Anderson, why can't you recollect Maria Maxwell?
A. I think I signed it.
Q. When did you sign it?
A. I don't know.
Q. Who signed it with you?
A. Mr. Humes signed it with me.
Q. Mr. Humes always signed with you when you signed it?
A. Yes, sir; and the person was always there to attest it.
Q. Well, how much was the check for?
A. I don't know, sir. I never paid any particular attention to it.
Q. How came you to pay particular attention to William Anderson?
284 A. I never; until the court told me to read the check out I never paid any particular attention to it.
Q. Then you recollected all about it?
A. Then I recollected all about the check.
Q. Then why can't you recollect when Maria Maxwell came and got here? Is there any reason why you could not recollect that just as well? You were not cleaning any "magnoliam" that day were you?

POOR COPY

A. I don't clean the minolium every day the pensioners come in. Not every day when the- come I am not cleaning the minolium.

Q. Do you know a man by the name of Stephen Ray?

A. I can't recollect.

Q. Well, now, if you signed his check, witnessed his mark on a check, would not you recollect something about him?

A. Stephen Ray? Yes, sir; I believe I do recollect Stephen Ray.

Q. Mr. Humes signed that with you, didn't he?

A. I think he did.

Q. Who was up there with you?

A. I think he was present when it was signed.

Q. Who?

A. The man who represented himself to be Stephen Ray.

Q. Don't you know whether it was Stephen Ray or not?

A. I could not swear it. He said he was.

285 Q. What sort of looking man was he?

A. It has been a good while since I have seen him. I couldn't tell you.

Q. Did you ever see him before?

A. I didn't pay no particular attention to him.

Q. Don't you know that he was dead at that time?

A. I don't know that.

Q. When was it you signed a check for Stephen Ray?

A. I couldn't tell you except I could see it.

Q. Now, who else was in there?

A. I couldn't tell that, either, unless I see the check.

Q. Do you know who went with him to the bank?

A. I do not.

Q. How many times did you witness Stephen Ray's mark?

A. I couldn't tell that, either.

Q. Did you do it more than once?

A. I don't know whether I did or not.

Q. Did you witness it as much as three times?

A. I don't know, sir.

Q. Tell the jury how you recollect Anderson and Bloodson and not these other people.

A. These are recently, and so I can recollect these two. They are very old gentlemen, and one of them is a very feeble man in getting about.

Q. How old was Stephen Ray? Was not he an old man, too?

A. Well, the man that represented himself to be Stephen

286 Ray was an old man, too; looked like he was about 60 years old.

Q. Well, how about the woman? Was she old or young?

A. She was an old lady.

Q. You don't recollect when that was, do you?

A. No, sir.

Q. Now, you say Stephen Ray—the others were recent. That was October, 1894?

A. October, 1894.

BLEED THROUGH

Q. September, 1894, was it not really, when you witnessed the vouchers?

A. September, 1894? When I witnessed the voucher it was September, 1894, and when I witnessed the check it was October, 1894.

Q. Wasn't it further back than that?

A. No, sir; just a month back.

Q. Look at that one and see.

A. Yes, sir; I recollect I witnessed this.

Q. What sort of looking man was that?

A. The man that represented himself made his mark here.

Q. What makes you say "represented himself"?

A. I mean the man that said he was Stephen Ray was a tall, bony-faced man. He was not near as bright as I am.

Q. When you signed that paper did not you know Stephen Ray was dead?

A. I don't know anything about it.

287 Q. Whether he was dead or living?

A. No, sir; I don't know whether he is dead to-night or not.

Q. What sort of looking man was that, now, that you signed that for?

A. I told you that he was a tall, spare man—bony-faced looking man.

Q. Was he crippled?

A. I don't know, sir, whether he was crippled or not. He did not appear to be crippled, but appeared to be in bad health.

Q. Isn't it a fact that there was not anybody there but Mr. Humes when that was signed?

A. No, sir; I won't sign nobody's check when they ain't there.

Q. Can you tell who was in the office when Maria Maxwell was in there and got her check signed?

A. I could not.

Q. Can you tell whether there were many people in there?

A. There were several people in there.

Q. Well, who were some of them?

A. I couldn't tell.

Q. Who went to the bank with her?

A. I don't know; I know I didn't go.

Q. How come you to notice who went with Bloodson and Anderson and not who went with Maria Maxwell?

288 A. Just because I happened to be there at work.

Q. You did not think you would be called on to testify about it?

A. No, sir; I didn't know there was anything coming up. I didn't think there — anything—any trouble—on hand to come up.

Q. Well, you say you never signed any check without anybody being there. You signed a number of vouchers there and some affidavits; were they all there?

A. All the vouchers I ever signed, there was somebody always present to be represented and say they were the person that voucher belonged to.

POOR COPY

Q. You knew they were the persons they represented themselves to be?

A. They said they were the persons. I taken their word for it.

Q. And you don't pretend that you knew who they were yourself?

A. No, sir.

Q. And yet you were being qualified here before the United States commissioner that you knew the person to be the person he represented himself to be; is that so?

A. Is which so?

Col. GANTT: Just read the check and see what he has qualified to. Your question assumes too much.

289 Mr. SIMONTON:

Q. Well, here is one for Stephen ——. Do you know Stephen ——?

A. I can't recollect him personally.

Q. Did not you testify that you did not know him?

A. Some things I spoke in there, and then there's some things I did not.

Q. Is not that your name in there now?

A. That is my name, sir.

Q. How do you know?

A. It is W. G. Franklin.

Q. Well, you have not seen it?

A. That is my name.

Q. Do you know Stephen G——, the man you identified there?

A. I can't recollect him.

Q. You testified there and were sworn by Mr. Humes that you knew the man he represented himself to be.

A. I can't bring him to my remembrance.

Q. Where did he live and what did he do?

A. I think he was a laborer or a farmer.

Q. Did not you testify here, within ten days ago, on the former trial of this case, that you did not know him?

A. No, sir; nobody never asked me about Stephen —— on the former trial. You asked me about those checks.

Q. Did not you testify on that trial that you did not know him?

290 A. You never asked me anything about Stephen —— on the trial before. You asked me about those checks. That has all come up since.

Q. What do you say now? Do you know him?

A. I suppose I know him.

Q. Did not you say a little while ago that you did not know him? Are you right now or were you right then?

A. I say I suppose I know him. I can't keep all those things in my head.

Q. Were you in Mr. Humes' office when Anderson came in there?

A. That day he come and got his check? Yes, sir; I was in there.

BLEED THROUGH

Q. Where was the check?
A. He had the check in an envelope and his papers.
Q. Anderson had it?
A. Yes, sir.
Q. Anderson brought the check in there?
A. Brought the envelope in there and handed it to Mr. Humes.
Q. Mr. Humes did not have the check and the envelope already in there when Anderson came in there?
A. No, sir; he didn't, because Anderson give it to him. I seen Anderson with it and I seen him hand it to Mr. Humes.
Q. Was it open when Anderson gave it to Mr. Humes?
—. No, sir; I think Mr. Humes opened it.
291 Q. But Mr. Humes did not get it out of—somewhere out of—his desk, and Anderson request- him to open it, and then he opened it?
A. No, sir.
Q. That is not the way of it?
A. No, sir.
Q. Now, recurring one moment to Stephen G——, there seems to have been an affidavit and oath administered to you in that instance by L. W. Humes. Were you sworn to that paper as to your knowledge of Stephen ——?
A. I may have been. I can't recollect all those things.
Q. You don't recollect whether you were sworn or not?
A. No, sir.
Q. You gave your deposition here once in this matter, did you not?
A. Yes, sir; give what I knew about it.
Q. To Mr. Ragsdale?
A. Yes, sir.
Q. Look at that and see if that is the deposition you gave to Mr. Ragsdale (handing paper to witness).
A. That is part of it, but I say there has been more wrote here since I signed my signature under it.
Q. What has been written there?
A. That down there (indicating).
Q. Well, read to the jury what you say has been written there since you signed it.

Col. GANTT: Your honor understands this is only to test his memory.
292 Mr. SIMONTON: No, sir; I am putting this in to contradict him.
The COURT: Yes; I understand him to say that he did make an affidavit to Mr. Ragsdale; did give Mr. Ragsdale an affidavit or calls it his deposition.
Mr. SIMONTON: That statement before Mr. Ragsdale is about an affidavit that he gave before L. W. Humes, and I have asked him whether he was sworn or not sworn by Mr. Humes in that identifying affidavit, and he says that he does not know and he thinks he was sworn. This is the amount of his testimony. Now, I want to

SH POOR COPY

call his attention and refresh his memory, and then he may speak, and if he does not, then I want to contradict him.

Col. GANTT: We think you are bound by the answer. This is not a relevant question in this case.

The COURT: Your opinion is that what he swore in that case is not relevant in this?

Mr. SIMONTON (to witness): What do you say now? You read that over. I am letting him refresh his memory about the affidavit before Mr. Humes as to the identity of Stephen——.

Judge GREER: And your question is with the view to testing his memory?

Mr. SIMONTON: Yes; on cross-examination.

The COURT: I understand it is limited to that.

293 Judge GREER: Well, if it is offered for anything else, Judge, you can say for the present that it is to test the accuracy of his recollection.

(To witness:) Well, haven't you read enough of that to know?

A. Yes, sir; I have read it all.

Mr. SIMONTON:

Q. Well, what do you say? Were you sworn by Mr. L. W. Humes to this affidavit on this paper which I showed you awhile ago?

(Objected to by counsel for defendant because it was asking the witness whether he made that affidavit or not. No ruling by the court.)

Mr. SIMONTON: Oh, no; he admits this. What do you say?

A. Well, I say, as far as I recollect, I think I was sworn.

Q. By L. W. Humes?

A. Yes, sir.

Q. Now, I want to ask the witness if he did not swear to this in the presence of Mr. Ragsdale—this affidavit—and did not he swear that he did not swear to the Stephen —— affidavit?

A. I told Mr. Ragsdale, like I am telling you, that I did not recollect, but I think I was.

Q. You signed this?

A. I signed that.

Q. And in this affidavit you say that you were not sworn to the other, didn't you?

A. I don't recollect.

Re-examined by Judge GREER:

Q. You state that you told Mr. Ragsdale just what you
294 have told Col. Simonton—that you did not recollect about Stephen?

A. Just like I spoke to Col. Simonton I spoke to Mr. Ragsdale.

Q. And you say some writing has been put in this after you signed it?

A. Just under my name there.

BLEED THROUGH

Q. Was that writing put on there in your presence?
A. No, sir.
Q. That is the part just below your signature?
A. Yes, sir.
Q. Where were you when you made this statement?
A. I was in the office with Mr. Ragsdale—in his office.
Q. Where was his office?
A. Down at the Randolph building. I think it was in the Randolph building.
Q How did you happen to be down there?
A. He sent for me. He sent for me about two weeks before I went down there.
Q. And it was in his office in the Randolph building?
A. Yes, sir.
Q. You went down there after getting a message from him that he wanted to see you?
A. Yes, sir.
Q. When he saw you were — in the room with him and other people or in a room with him alone?
A. When he taken that deposition me and him were in a room by ourselves.
Q. What did he tell you he wanted you down there for?
A. He said he sent for me to come down there and wanted
295 to know of me about Stephen ——.
Q. Mr. Ragsdale wrote that up there before you signed your name (indicating on paper)?
A. Yes, sir; that is all Mr. Ragsdale's writing up there but my name.

Recross-examined by Mr. SIMONTON:

Q. I believe you say he sent for you to come down there and you did not go for about two weeks?
A. No, sir; I didn't go.
Q. You went when you got ready?
A. No, sir; Mr. Humes asked me to go; said Mr. Ragsdale had been round to his office to see him.
Q. You went down there?
A. Yes, sir.
Q. And gave that statement voluntarily? Well, you can stand aside.

Judge GREER:

Q. Did you read this over before you put your signature to it?
A. At the time Mr. Ragsdale sent for me? I was in a hurry; I paid but very little attention to it and put my signature to it.

Mr. SIMONTON:

Q. Was it read over to you?
A. He read it over to me.
Q. You had a chance to read it if you wanted to?

POOR COPY

A. I had a chance to read it if I wanted to, but it didn't interest me that much to read it.

Q. You just signed it and swore to it?

A. Yes, sir.

296 CORNELIUS SANDERLIN (colored), a witness for defendant, being first duly sworn, was examined by Col. Gantt as follows:

Q. What is your name?

A. Cornelius Sanderlin, sir.

Q. Do you know Mr. Humes, the defendant, here?

A. Yes, sir.

Q. How long have you known him?

A. I been knowing him about three or four years; maybe longer.

Q. Are you a pensioner?

A. Yes, sir.

Q. Do you know this man William Anderson?

A. Yes, sir; I know him.

Q. State whether or not you knew him in the army.

A. Yes, sir; he belonged to Company N, in the 3d United States.

Q. Did you and he belong to the same company or to different companies?

A. No, sir; we didn't belong to the same company; used to be on guard once in a while together, now and then, when they come different times.

Q. State whether or not in the month of October, 1894, you went with him from Mr. Humes' office anywhere and why it was.

A. All I know 'bout him I just went with him to the bank; Mr. Humes give him a check and I went with him and showed him the bank; that was all.

Q. What bank was it?

A. Went to Mr. Humes' bank; Youn*d* Humes' bank.

297 Q. The Mechanics' savings bank?

A. Yes, sir; that's right on the corner of Main and Madison.

Q. Do you recollect what time of day it was?

A. Well, sir; I think it was along about in the morning about 11 o'clock, maybe, or 12; I couldn't tell exactly the time of day; might 'a' been earlier or later.

Q. How did you happen to go with him?

A. Well, by working there a little bit for Mr. Humes. I'd been sick, and he had me out at the house, and——

Q. Did he request you to go to the bank with Anderson?

A. Anderson and he both requested me. Anderson didn't know where the bank was, and I showed him where the bank was. I had been with several of them to the bank—different men.

Q. Where was the check when you went around there? Who had it?

A. He took it out the envelope and give it to Anderson.

Q. And gave it to whom?

BLEED THROUGH

A. Anderson.
Q. Anderson had it?
A. Yes, sir; Anderson had it.
Q. Now, did Anderson go in the bank with it?
A. Yes, sir; went in the bank with me, went in before me. I showed him where it was and went right in behind him.
Q. What, if anything, occurred when you went in there?
A. Well, he just handed the check to Mr. Young Humes,
298 and he asked him, "What's your name?" and he says, William Anderson. He says, "All right?" and he look at me, and I says, "Yes, sir; it's William Anderson," and stepped back and never had anything more to say.
Q. You nodded your head?
A. Yes, sir; I nod my head at him.
Mr. SIMONTON: But you said——
A. No, sir; I said to Mr. Humes.

Col. GANTT:

Q. And you did nod your head to Mr. Humes?
A. I nod *nod* my head at him.
Q. And then Mr. Humes looked at you, and then you nodded your head?
A. Yes, sir.
Q. What did Mr. Humes do?
A. He paid him.
Q. What was done with the check?
A. Some of 'em believe they ought to bring the check back. I said, "You got your money, and you don't get no check back." He says, Yes.
Q. The Mr. Humes that you are talking about is not the defendant?
A. No, sir; the brother or brother-in-law or something.
Q. He stays in the bank?
A. Oh, I wasn't in there no time—wasn't in there ten minutes—before he was out and gone again; didn't take him no time to pay him; just handed it to him as fast as a man could, I reckon.
Q. Just a short time?
A. Just a short time.
299 Q. Do you know whether that was the first draw Anderson had made or not?
A. Well, I didn't know whether it was the first draw or not.
Q. Why did you go with him to the bank?
A. He didn't know the way. I know that and I showed him.
Q. Which way did Anderson go after he came out of the bank?
A. Come right down on Main street.
Q. And where did you go then?
A. I went on round to the office. I stopped to talk to people along the street; first one, then another; take my time.
Q. Did you get any of that money?
A. Got fifty cents.
Q. What did you do with that 50c.?

POOR COPY

A. Give it to Mr. Humes when I got round to the office.
Q. Did you get any more of it?
A. No, sir; not a nickel of that.
Q. So far as you know, did Mr. Humes get a cent of it?
A. No, sir; not that I see at all. I never see him get any of it.
Q. Do you know a pensioner by the name of Isaac Bloodson?
A. Yes, sir; an old man—white-headed man.
Q. I will ask you, before going to that, Is Anderson an old man?
A. Yes, sir; he is a old man, but his head isn't white. He is a old, broke-up-looking man.
300 Q. Bloodson's hair and whiskers are gray?
A. Yes, sir; white.
Q. Is he a tall man?
A. Yes, sir; he is a good, heavy-set man—a man, I reckon, nigh about six foot high.
Q. State whether you went from Mr. Humes' office anywhere in the Christmas of last year to the bank with Bloodson. And if you went with him, what did you go for?
A. I went with him to show him the bank; like I did more when they went there.
Q. What did he have in his hand?
A. He had a piece of paper. They all rolls it up in their hand going to the bank.
Q. What bank—the same one?
A. Yes, sir; same bank—Mechanics' savings bank.
Q. State what occurred.
A. Well, when I got to the bank with him, one of *of* the men what belonged to my post what we was making up, he tackled me to ask me some questions. I told him I was going to the bank with this man and would be out to see him in a minute, and I went right up on top of the door facing and jarred the door and told him to go in there, and he went in.
Q. Who went in?
A. Bloodson, and they paid him.
Q. Who paid him?
A. Mr. Humes.
Q. Paid him what?
A. Paid him money on his check.
301 Q. He gave Mr. Humes the check?
A. Yes, sir; for I looked at him hand it to him.
Q. State whether or not Mr. Humes said anything to him—asked him who he was.
A. Yes, sir; asked him who he was.
Q. Did he tell him who he was?
A. Well, I jarred the door over at the time; Bloodson slow about speaking, and I nod my head at him this way (indicating).
Q. At Mr. Humes?
A. Yes, sir; I didn't say anything to him; just nod my head at him that a way (indicating) when he asked me about Bloodson.
Q. Mr. Humes knew you?
A. Yes, sir; he knew me when I been round there; carried men

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and checks round there. He give me money several times on my own check.

Q. Did you get any of Bloodson's money?

A. No, sir.

Q. So far as you know or saw, did Mr. Humes get any of it?

A. Not as I knows, sir. I never saw it.

Q. You say you just stood on the step; did not get quite in?

A. Didn't get clean in the door, sir.

Q. After Bloodson got his money and came out where did he go?

A. Came on down the street, and I stood there talking to a man by name of Calvin some time; never paid much attention
302 which way he went to; stayed there half an hour—a good while.

Q. Calvin, the man you were talking to, was that the man you were trying to fix a post with?

A. Yes, sir; and I never thought about Bloodson any more; we was fixing up the post.

Q. What do you mean by a "post"?

A. Well, soldiers go in and making club together and helping one another—living together. That's what me and Calvin was talking about.

Q. How far is the door that you pushed open from the place where Mr. Humes stood?

A. 'Tain't no further than across here to the gentleman setting there.

Q. To where Mr. Simonton is sitting—7 or 8 feet?

A. Yes, sir. Of course, I didn't measure the distance, but I don't think it's any further, if it's that fur.

Cross-examined by Mr. SIMONTON:

Q. You stay about Mr. Humes' office a good deal, do you?

A. Yes, sir; I knock round there right smart.

Q. And have been around there for many years?

A. In 1894 I went there; 'long about cleaning up for him; 'long about August and June and July.

303 Q. And you were there the morning that William Anderson got his check?

A. Yes, sir; I was there that morning, working and knocking round there.

Q. What time did Anderson get there that day?

A. Well, he got there something betwixt 11 and 12, or maybe it might have been earlier or later. I don't know directly, sir.

Q. That is as near as you can come to it?

A. Nigh as I can get at it.

Q. Did the old man bring his envelope with him, and his check?

A. Yes, sir; he brought it with him; at least he had it there. Mr. Humes give it to him. I was out at the coal box talking to one of the tailors, I think, but I was there.

Q. I want to understand whether you were in the house or not when he come in.

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A. Yes, sir; I was in the house.

Q. Did he bring his envelope with him, with his check in it, when he came in?

A. When I seed him he had it in his hand, standing up talking, and Mr. Humes told him, "Here's your papers come, Anderson."

Q. I infer from what you say, then, that Anderson did not bring it himself; that Humes already had it there?

A. I can't say that. I don't know that, because I didn't see it.

304 Q. Who else was there?

A. There was two or three more in there.

Q. Who were they?

A. I don't know who they were, so many different men coming up.

Q. Can't you remember any of them?

A. Well, the only one I remember was there at the time was—let me see. I don't know who was there. I don't know who was in the house; that's the truth about it.

Q. You can't recollect anybody?

A. No, sir, I don't recollect anybody that was there. There was three or four.

Q. Where was Franklin?

A. Franklin?

Q. Yes; Franklin.

A. I believe Frank was there, if I ain't mistaken, setting in the other room, reading a paper. Franklin was there, and there was a woman—two women was there.

Q. Was Humes in the other room from where Franklin was?

A. No, sir; Franklin was setting there in the main room, by the window.

Q. Did Anderson go in there?

A. Yes, sir.

Q. You did not go in there?

A. Not then; not until after he called me and told me to go with him to the bank.

Q. Who called you?

A. Mr. Humes called me.

Q. Do you know what that day was?

A. No, sir; I don't know. It was some time about October; I don't know whether it was the first or what; it was some-

305 where in October, though; might have been about the 8th of October.

Q. You think it was about the 8th of October?

A. Might have been.

Q. How do you know it was October?

A. Because I know the months. I know what month it was.

Q. You have not talked to anybody to find out whether it was the 8th of October?

A. No, sir.

Q. You just dropped on the 8th of October yourself?

A. Yes, sir; because I think it was about that time.

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Q. Whereabouts was Mr. Humes' office then?

A. It was on Court street—West Court, 17, upstairs.

Q. Well, when you went down to the bank, what time of day was it then?

A. About 11 or 12 o'clock; maybe later or earlier. I couldn't tell the exact time. They have a clock there, but I don't pay no attention to it half the time; don't bother my time with it.

Q. Did you go in the bank with William?

A. Yes, sir; I went in the bank with him.

Q. Was anybody else in there that day?

A. No, sir; nobody but me and him—the banker that paid him, the cashier.

Q. Was not that regular pension pay-day, and were not a great many in there?

A. No, sir; it wasn't no regular pension pay-day.

Q. It was not?

A. No, sir; it was not. I know that.

306 Q. It was not the regular pension pay-day?

A. No, sir; it wasn't.

Q. How do you know it was not the regular pension pay-day?

A. Because I could tell by knowing it. I was drawing a pension myself, and it wasn't my draw-day.

Q. And there was nobody else that day drawing except William?

A. Well, might have been.

Q. Well, if there had been anybody else there getting a pension, would not you have known it?

A. Well, I don't know, sir. People come and go in there, and I don't know nothing about it.

Q. And you say that was not the regular pension pay-day?

A. No, sir; it wasn't no regular pension day, when everybody comes in by twenty or thirty.

Q. When is the regular pension pay-day?

A. Well, it's on the 4th of every third month.

Q. What months?

A. November and——

Q. Well, go on. You say it was November?

A. November ain't a pay-day with us.

Q. When is the pay-day in the fall—your day? It is not the 8th day of October, is it?

A. The 4th of every third month is pay-day.

Q. Well, which is the third month?

307 A. Well, like we get paid in July; get paid in August; don't get no more pay until September. Then maybe comes twenty or thirty; comes in different times; don't none of 'em's pensions come together.

Q. Then you went to the bank. I understand you just walked in and did not say anything to Mr. Humes again; you just nodded your head.

A. That's all I done when he asked if that was William Anderson.

Q. Where were you at that time?

H POOR COPY

A. I was standing just inside of the door.

Q. And when Bloodson went there you did not go in?

A. I didn't go in; I was standing on the last step, like this was inside the door, with the door half ajar.

Q. How much money did Anderson get?

A. I don't know, sir; ain't been never asked him how much he got.

Q. Did you know whether it was Bloodson's first pay or not?

A. I didn't know that; I knowed it was betwixt. I knowed it was a unreasonable time, but I didn't ask him, because I didn't meddle with the business much.

Q. I will ask you if Mr. Humes did not frequently send you down to get the checks cashed for pensioners who lived out of the city, so as to have the money ready when that would come in.

A. No, sir; never give me nobody's check to have cashed.

308 Q. Do you know Sam. Green? You knew him, didn't you?

Judge GREER: Is that testing his memory?

Mr. SIMONTON: I think this a proper question to test the witness on. I have asked him the question now if Mr. Humes did not send him out to cash the checks of pensioners and have the money ready, ready for them when they would come in, and I want to ask him if he has not said heretofore that he did.

The COURT: You brought that out on cross-examination; the other side did not ask it, and you propose now to contradict him about a thing you brought out.

Mr. SIMONTON: Well, yes, sir; I think I might.

The COURT: I do not think so.

Mr. SIMONTON: As independent proof might I not ask is this was a habit of the office?

The COURT: You may ask about the habits of the office, if you want to—that is, his customary methods—but not special transactions. Ask him about his office, if you want to; about his way of doing business there.

Mr. SIMONTON: Well, I don't know that I care to ask that question of this witness. It is a hostile witness to me.

The COURT: In the *the* case is now in I cannot see that it is competent to offer a special transaction. You went outside. They limited their inquiry to Anderson, Bloodson, and Haynes.

309 Now, when you cross-examined, you went beyond that. Then, as new matter, you ask him if Humes did not frequently send checks by him and have them cashed, so as to *to* have the money ready. He says he did not. Now, then, you propose to show that that is not true by asking him about a special transaction. You see that is new matter that you brought out originally. I feel pretty certain that you cannot brink out a question of that sort, then undertake to show that he is mistaken. That is your testimony. When you asked him that you made him your witness. There is objection to the proof?

Judge GREER: Oh, certainly; we object.

The COURT: The objection is sustained.

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Mr. SIMONTON: Does your honor hold that contradiction of a witness is only as to what is brought out in chief?

The COURT: Yes, sir.

Mr. SIMONTON: Now, here is a matter which, if true, is certainly within this witness's knowledge, and I can show that he at other times has made a different statement.

The COURT: I do not see how you can do that when you bring the matter out. If you were cross-examining him, it might be so. You may show by independent testimony that it is not that way.

310 Mr. SIMONTON: If your honor please, on another ground, I have a right to test this witness's credibility in all sorts of ways.

The COURT: Why don't you first ask him the question; then if he did make this other statement?

Mr. SIMONTON: I have. That is what they stopped me on. I asked if he did not make it.

The COURT: Fix the time and place.

Mr. SIMONTON:

Q. Well, do you know one Samuel Green, a pensioner?

A. Yes, sir; I know him.

Q. I will ask you if last February, at Green's house, did you not tell him that Mr. Humes was in the habit of having you go — the bank to get the checks of pensioners cashed, to have the money ready when the pensioners themselves would come in—the pensioners that lived outside the city?

A. No, sir; I never did tell that.

(Counsel for defendant objected to both question and answer as incompetent.)

The COURT: I will let that answer stand for the present. I have great doubt about that. I do not rule on that finally. It may stand that way for the present.

Mr. SIMONTON: Now, then, I want to ask the witness this further: If to this same witness, Samuel Green, at a later date in May,
311 if this witness did not tell him that you would remonstrate with Mr. Humes about that way of doing, and say that he would get himself in trouble about it?

A. No, sir; I never did say no such thing to him.

Q. Down there at his house?

A. No, sir; I never had any talk with him about Mr. Humes.

Q. Do you remember when you carried some money out there?

A. No, sir; I never did.

The COURT: Now, you remember these two witnesses and questions that he answers in the negative.

Mr. SIMONTON:

Q. Do you know Maria Maxwell?

A. Yes, sir.

POOR COPY

Q. Did you go with her to the bank to get her money?
A. Her daughter went with her to the bank.
Q. You did not go?
A. I didn't go with her.
Q. Which time are you talking about, when her daughter went with her?
A. Her daughter went with her every time she went. She never failed going. She went with her every time since I been knowing her.
Q. You did not take Joshua Haynes to the bank?
A. No, sir; I didn't know nothing 'bout him then.
Q. He was one man you missed?
A. No, sir; I didn't know nothing 'bout him.

312 W. Y. C. HUMES, a witness for defendant, being first duly sworn, was examined by Col. Gantt as follows:

Q. What is your business?
—. I am a bank cashier.
Q. For what bank?
A. The Mechanics' savings bank.
Q. What relation are you, if any, to the defendant?
A. His half brother.
Q. I wish you would look at the Anderson check now shown you, and the Bloodson check also. Can you tell where that check was paid?
A. Yes, sir; it was cashed at our bank.
Q. Is there anything on the face of the check that will — the date when it was cashed?
A. No, sir.
Q. Have you any book that will show it?

Mr. SIMONTON: Don't speak about your books unless you have got them here.

Col. GANTT:

Q. Well, I have got them here. Is this the book?
A. Yes, sir.
Q. I wish you would turn in this book and see whether you have got any entry in that book in regard to the Anderson check.
A. Yes, sir; I have got that check entered here.
Q. What is the date?
A. October 8th.
Q. To whom did you pay that check?
A. I paid it to William Anderson.
Q. A white man or a colored man?
A. A colored man.
Q. You are sure that you paid it to William Anderson?
A. Yes, sir.
313 Q. Who was with him, if any one?
A. I think Sanderlin was with him.
Q. When William Anderson came in with the check to the bank,

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you say it was on the 8th of October, 1894, and presented it, if at all, what question did you put to him—any?

A. Yes, sir.

Q. What was it?

A. "What is your name?"

Q. What did he answer?

A. William Anderson.

Q. And you say Sanderlin was there?

A. Yes, sir.

Q. What did Sanderlin do, if anything?

A. I said, "Sanderlin, is this right?" He said, "Yes, sir."

Q. And then you paid him the check?

A. Yes, sir.

Q. Now, you are positively sure you did not pay that check to a white man?

A. Yes, sir.

Q. You did not pay it to Sanderlin?

A. No, sir.

Q. You paid it to Anderson?

A. Yes, sir.

Q. Have you seen Anderson lately?

A. Yes, sir.

Q. When?

—. I saw him in this court-room week before last.

Q. State whether you recognized him as the man you paid the check to.

A. Yes, sir.

Q. And on the 8th of October you paid that check?

A. Yes, sir.

Q. He said his name was William Anderson, and Sanderlin identified him?

A. Yes, sir.

Q. What is the amount of that check?

A. $536.40.

Q. Did you pay him the whole of the money?

314 A. Yes, sir; with the exception of my exchange.

Q. How much was that?

A. Twenty-five cents on the hundred dollars.

Q. Now, it was all paid to him with that exception?

A. Yes, sir.

Q. Now, you have turned to the place in the book where you say that check is scheduled or entered. Will you please read what your book says about it? First read the check itself.

A. The check is check number 743,149, dated Knoxville, Tenn., October 3d, 1894, drawn on the assistant treasurer of the United States, at New York. (The witness here read the check to the jury.) The check was endorsed by William Anderson, witnessed by L. W. Humes and J. H. Purcell, and endorsed by the Mechanics' savings bank to the National City bank, New York, and stamped paid by them.

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Q. How did Anderson endorse it, by writing his name or making his mark?

A. By his mark.

Q. Now, having read the check and the endorsements upon it—before that, however, why did the bank endorse it?

A. We endorsed it payable to the National City Bank of New York, which is our correspondent in New York, and we sent the check to them.

315 Q. After you had paid the paper what did you do with it?

A. After I had paid it to Anderson I put it in my cash drawer.

Q. Then what did you do with it after that?

A. Entered it up on my cash book, then I entered it in my collection register, then I wrote a letter to New York and sent it to them there.

Q. And you know in the due course of business it was paid in New York?

A. Yes, sir; I had advice from them.

Q. Were you- entries of even date with that?

A. Yes, sir. (Reads:) "D. A. Carpenter, account of William Anderson, collected of the assistant treasurer of New York; date of check, October 3d, 1894; sent to National City Bank of New York $536.40."

Q. Do you know a man by the name of Isaac Bloodson?

A. Yes, sir.

Q. What sort of a looking man is he?

A. He is a tall, black negro, with grey hair and grey whiskers.

Q. Look at this other check now handed to you. Did you pay that?

A. Yes, sir.

Q. To whom did you pay that check?

A. To Isaac Bloodson.

Q. Where?

A. In the Mechanics' savings bank.

Q. Look in your book and see when you made that pay-
316 ment. There is nothing on the check itself to show, I suppose.

A. No, sir.

Mr. SIMONTON:

Q. You cannot tell without looking in the book, I suppose?

A. I cannot carry all the checks in my head, sir. I have a record of that check here.

Col. GANTT:

Q. What is the date?

A. December 24th, 1894. Check No. 791,759; drawer, D. A. Carpenter, account of Isaac Bloodson; witnessed by L. W. Humes and W. G. Franklin; drawn on the assistant treasurer of the United States New York December 16th; sent to National City bank; for $567.20.

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Q. Does that entry correspond with the Blood- check in all particulars?

A. Yes, sir; it is a description of it.

Q. What did you do with the check? To whom did you pay that?

A. To Isaac Bloodson.

Q. Did any one come with him?

A. Yes, sir.

Q. Who was it?

A. Sanderlin.

Q. Did you — Bloodson before that?

A. No, sir.

Q. What is it that enables you to remember him, if you do remember him?

A. Well, Isaac Bloodson is a peculiar looking negro, and he came in the bank there on Christmas eve, in the afternoon, and I pa-d him over this $560 less my exchange, and I joked the old man about having so much money on Christmas eve.

317 Q. Well, are you quite sure it was Christmas eve?

A. Yes, sir.

Q. Have you seen him since?

A. Yes, sir.

Q. Have you any doubt about his identity?

A. No, sir; I know him very well.

Q. You mean you recognize him very readily?

A. Yes, sir.

Q. Will you take your book to the jury there and explain to the jury how you make those entries and let the jury look at them, if they choose to do so.?

(The witness here showed and explained to the jury the entries, as requested, and explained the manner of keeping said book.)

A. Now, you see, each date here is ruled off by itself, and I rule these two red lines to show that that is the business done on that day, on different days. Now, when I enter up this check I take it in my hand this way. This is my date, 1894, October 8th; check for $536.40, No. 743,159; drawer, D. A. Carpenter, U. S. pension agent; William Anderson. Other endorsers that appear on the check, L. W. Humes and G. H. Purcell. The check is on the assistant U. S. treasurer at New York. I then put the date of the check itself, to whom I sent it—the National City Bank of New

318 York—and the amount of the check. Now, this other check was December 24th. The number of this check is 791,759, drawn by D. A. Carpenter, U. S. pension agent, account of Isaac Bloodson; witness-, L. W. Humes and W. G. Franklin; date of check, December 16th; sent to National City Bank of New York; for $567.20.

Judge GREER: How many pages intervene there between your entry of October 8th, describing the Anderson check, and your entry of December 24th, describing the Bloodson check?

A. (After counting.) Nine pages.

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Q. How many different checks are described on each one of those pages?

A. (After counting.) Thirty-eight.

Mr. SIMONTON: Thirty-eight on each page?

A. Well, no; not exactly thirty-eight checks on each page; it depends on the length of the day. There might be a difference of a good many checks on a page. There were 38 on that page.

Mr. SIMONTON:

Q. Do you always begin on a new page every day?

A. No; not always. When I end a day I always draw a red line like this. Then I commence directly under that red line the next day.

Mr. SIMONTON:

Q. It is always practically the same?

A. Practically the same.

Mr. SIMONTON:

Q. And how many pages?

319 A. Nine pages.

Col. GANTT:

Q. I forgot to ask you whether in regard to the Anderson check—whether the entries or entry, if you call it one, was made contemporaneously with the payment of the check on the same day.

A. You mean was it made on the same day? Yes, sir.

Q. That is the Bloodson check?

A. Yes, sir.

Cross-examined by Mr. SIMONTON:

Q. Your bank cashed a great many of these checks drawn by D. A. Carpenter, did it?

A. Yes, sir.

Q. About this time, in 1894, how long had your bank been cashing them, Mr. Humes?

A. That record there would show. I would not like to say right out of my head, Col. Simonton.

Q. Well, what is your best recollection about it?

A. My best recollection about it is that we commenced, I think, in August, cashing them pretty freely.

Q. Well, in the run of your business, about how many of those would you cash in a day?

A. Well, we did not cash them every day. I have cashed as many as 25 or 30 of them in a day, I guess.

Q. You do not undertake to recollect the circumstance of paying each one of these persons you cashed checks for?

A. No, sir.

320 Q. Twenty-five a day sometimes, you say?

A. There have been as many as that; not often.

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Q. Then how does it come that you recollect the payment of the check to William Anderson?

A. Well, I recollect the payment of the check of William Anderson in this way: I recollect that a negro man came in there and got that money, and I have seen Anderson and I recollect Anderson as the man that did it.

Q. Was that so unusual as to make you recollect it?

A. Well, I will state my answer over again. I remember it because Sanderlin brought the man in there, and I have seen Anderson since and I recognize him as the man, and it made an impression on me because it is a very large check to pay to a negro.

Q. Did not Sanderlin bring a number of other persons in there?

A. He brought a number, but not a number of that sized checks to be paid.

Q. When you testified in this matter some two weeks ago or thereabouts, when you were on the stand, did you not say you did not recollect Anderson's appearance?

A. Yes, sir; and I say I have seen Anderson since, and know I do recognize him.

Q. Did you not say on the stand there that if you were to
321 see Anderson you would not know him?

A. No, sir; I did not say that.

Q. Did not you say you could not give a description of him?

A. I said I could not recall his appearance to my mind without seeing him.

Q. You were not able, then, to give any description of him at all when you were first on the stand?

A. Except that he was a negro.

Q. And afterwards you saw him on the witness stand, and, being identified as Anderson, then you thought you recognized him?

A. No; then I positively recognized him.

Q. You do positively recognize him?

A. Yes, sir.

Q. And at first when you were questioned about him you had not seen him then for a long time, had you?

A. Well, Anderson was in the bank since I cashed that check. I don't think I had seen him in some months, though.

Q. Did Anderson ever cash any other checks at your bank?

A. I think so.

Q. Well, sir, find them for me.

A. I think I can.

Q. Well, I want to ask you now—you say you cashed another check for Anderson after that. Who brought him in that time?

A. I don't know.

322 Q. When was it?

A. I cannot say until I refer to my books.

Q. Well, now, if you had not had your book could you tell when you had cashed that first one to William Anderson except by looking at your book?

A. I could not have sworn without referring to my books that it was on October 8th; no sir.

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Q. Then give me some idea how long after this 8th day of October it was until you cashed another one for Anderson.

A. Well, I won't be positive about that. If you want me to give you a conjecture about it I will do it.

Q. Well, give us a conjecture.

A. I think it was at the regular time these men came in. There were quarterly payments. These checks were paid every quarter; though I won't be positive about that.

Q. Well, I don't understand you yet, whether anybody came with him the second time or whether he came alone.

A. Well, I don't know. It would not have been necessary for any one to come the second time, because I would have known the man.

Q. You remember Richard Harris, do you?

A. Yes, sir.

Q. Well, he came and got a pension check cashed at your bank?

323 A. Yes, sir; he got several.

Q. He had to be identified when he got the first check cashed?

A. Yes, sir.

Q. He had cashed checks before that, hadn't he?

A. When you asked me about a pension check I thought you meant the bounty check. I called that a pension check.

Q. They were cashed at your bank, and he had to be identified?

A. He was identified.

Q. Did not you testify that he had to be identified?

A. I testify that any man that came to my bank that I did not know would have to be identified.

Q. And he is as remarkable in his appearance as Bloodson?

A. I do not think he is.

Q. Is not he as tall?

A. I don't think he is.

Q. How tall is Bloodson, in your judgment?

A. I think that Bloodson is over 5 feet 11; may be 6 feet.

Q. I see a check here paid through your bank which reads: "United States pension agency, November, 1894. Assistant treasurer, pay to Harry Wynne $36," and signed by D. A. Carpenter and J. M. Cate and endorsed on the back, "Witnessed by L. W. Humes and William Wallace." Do you remember whether that was paid in your bank?

A. Let me see the check.

Q. I am testing your recollection.

324 A. I have said that I do not recollect any of those checks unless I refer to my book.

Q. Who was this check paid to?

A. It was paid to Harry Wynne.

Q. How do you know it was?

A. The man that was represented to me as being Harry Wynne.

Q. Now, do you recollect about that?

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A. No, sir.

Q. Then you speak from your usual course of business or from your recollection?

A. I am speaking from my usual course of business.

Q. Well, you have got no recollection about it, have you?

A. No, sir; the only thing I can go by is my record in regard to that check.

Q. I will ask you why it is, if you go by your record in these matters, that you recollect these two?

A. Because they are large amounts.

Q. Are those the only large amounts that you cashed?

A. No, sir.

Q. Who else did you cash a large amount for?

A. I can almost tell you without referring to the book. I cashed one for Armistead Pope.

Q. When did you cash that?

A. That was cashed on the same day that I cashed the one for William Anderson.

Q. Have you seen that on your book lately?

325 A. No; I remember that negro.

Q. Who came with him?

A. Mrs. Kate Wallace.

Q. Give me another one.

A. I will give you Mrs. Elizabeth Davis.

Q. How much was her check for?

A. It was for over $3,000.

Q. Well, give me another one.

A. I think that is about all of the large ones. There may be one that I can't recall. I think all the large ones were Armistead Pope, Elizabeth Davis, William Anderson, Isaac Bloodson, and Richard Harris. There may be one or two more possibly, but I can't recall them.

Q. Do you remember a pensioner named Caroline Turner?

A. No; I cannot recall her.

Q. Well, she seems to have been paid in August, 1894. You do not recollect her?

A. No, sir.

Q. Well, now, looking at your book, see if you can recollect something about her then.

A. (After looking at book.) No; I cannot remember this.

Q. How much is that?

A. $367.60. I said there might be one or two others.

Q. Have you made an estimate to know how many of these checks were cashed in and through your bank in the course of twelve months?

326 A. I made a count in the court-room here week before last, from August, 1894, to August, 1895, of these pension checks.

Q. And how many were there?

A. 514.

Q. Now, then, referring one moment back to this $367 check of Turner, is that a colored person or a white person?

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A. I am pretty sure she is a negro.
Q. Who came and identified her?
A. Mrs. Kate Wells.
Q. Now, Mr. Humes, you were asked if this book was a record of what passed at the time.
A. Yes, sir.
Q. Do you mean to say that when one of those checks was paid at the bank you immediately entered in this book?
A. No, sir; I did not say that.
Q. How did you keep a record of it?
A. You mean in what way?
Q. Yes, sir; this record which you have shown to the jury and read here, showing the number of the check, by whom drawn, in whose favor drawn, by whom endorsed, and what you did with it, what was that record made from?
A. When I paid the check I put it in the cash drawer, in the department for foreign-exchange checks. When 3 o'clock came
327 I took these checks out of that drawer, entered them up on my cash book, and, when I had done that, entered them in that register.
Q. When did you enter them on the register?
A. Just immediately after entering them on my cash book.
Q. I understand you that when one of these would come in you paid the money and put them in your cash drawer. You made no memorandum at the time, but laid them away?
A. Yes, sir.
Q. And when you went to make up the book would set down the entry from the face of the check?
A. Yes, sir; because that was the record of the transaction.
Q. So the book does not show anything more than the check itself does, except the date that it was cashed and the date that you sent it off?
A. Yes, sir.
Q. The other items you take from the check itself?
A. The check itself is the transaction. It is the record of the transaction. The man that got the money endorsed it. That is the record of the transaction, the check is, and this is just a copy of the record of the transaction, that book is.
Q. Now, if you paid that check off in the morning you did not put anything on your book until 3 o'clock?
A. Or possibly a little afterwards.
328 Q. You- book does not show any more about who it was paid to that the check itself shows?
A. No more than the check itself shows.
Q. And that column in your book, "To the account of," simply means to whom it was payable?
A. Yes, sir.
Q. And it does not show to whom it was paid?
A. No more than the check does.
Q. What time was Anderson at your bank, if you have any independent recollection from your book?

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A. I don't know what hour of the day it was.

Q. Do you know whether it was in the forenoon or the afternoon?

A. It is my impression that it was in the forenoon.

Q. That is merely an impression?

A. Yes, sir.

Q. How long did your bank stay open on Christmas eve?

A. The bank closed at three o'clock.

Q. The same as every other day?

A. Yes, sir.

Q. I want to ask you about this check here of Harry Wynne. Is it not true that you paid that check of Harry Wynne? To whom did you pay it?

A. The man I supposed to be Harry Wynne.

Q. Did you not, in fact, pay that to William Wallace, the person who witnessed?

A. I don't know whether I did or not.

329 Q. Was not Harry Wynne sick at home at that time?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. There is another one here; a second one. Do you know about it?

A. No, sir.

Q. Well, here is one to Henry Hawkins. Do you know anything about that?

A. No more than that I paid it to the man I supposed to be Henry Hawkins.

Q. Have you any recollection of it at all?

A. Read the check? You have not even read the check to me. (The check was here shown to the witness.) A. No, sir; I have no recollection of this particular check.

Q. Who identified that person?

A. I just said I had no recollection about this particular check.

Q. Do you remember cashing one for Rufus Montgomery?

A. Let me see the check.

Q. I believe it is not here. I beg your pardon. I withdraw the question. That did not pass through your bank.

Re-examined by Col. GANTT:

Q. You say that the small checks—the whole amount of them in the period named—was 514?

A. Yes, sir; 514 checks.

Q. What did the small amounts run from?

A. $18, $34, $36; sometimes $12.

Q. Now, the large ones were how many in all?

330 A. Well, we have just counted them. There are, I believe, six or seven.

Q. Out of a body of 514?

A. Yes, sir.

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Recross-examined by Mr. SIMONTON:

Q. You cashed other checks besides pension checks?
A. Yes, sir.
Q. Large and small?
A. Yes, sir.
Q. You did not keep a record in this book of the individual checks of depositors?
A. No, sir; they are kept in an individual ledger.
Q. What do you mean by foreign checks?
A. By foreign checks, checks that are not on a Memphis bank.
Q. What time did you open the bank?
A. At 9 o'clock.
Q. Business hours were from 9 to 3?
A. Except on Saturdays; then from 9 to 7.

Defendant closed.

Upon the conclusion of the evidence of the defendant the Government offered the following rebutting evidence:

SAMUEL GREEN (colored), a witness for the Government, being first duly sworn, was examined by Mr. Simonton as follows:

Q. Do you know one Cornelius Sanderlin?
A. Yes, sir.
Q. Did you have a conversation with him at your house last February in this city?
331 A. Yes, sir.
Q. Did Sanderlin say to you at that time that Mr. Humes was in the habit of having him go to the bank to get checks of pensioners cashed when pensioners were out of the city, so as not to be bothered with them when they come in, as the people at the bank knew him?
A. Not in that way.

(Question objected to by counsel for defendant as incompetent.)

The COURT: The defense asked him particularly about the two transactions with Bloodson and Anderson, and then, by way of new matter, you brought out, or rather asked, the fact if Humes had not been in the habit of having him to go and get checks cashed so as to get the money ready by the time they came. He answered, No. That was brought out by you, and it was not responsive to the original examination; and now you propose to show that his answer to you in respect to that matter was untrue, or rather to contradict him as to that, and I am of opinion that you cannot do that. You cannot call out an original statement of your own
332 and to which you make him your own witness, and then impeach him by showing that he has told an untruth. I feel pretty certain that you cannot do that.

(After argument by the district attorney, the court allowed the witness to answer the question for the present. To this ruling counsel for defendant excepted.)

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Mr. SIMONTON:

Q. You say that is what he said, but not in that way. Now, you state what he said.

A. He said they kept money there to give them what lived at a distance, so they wouldn't be bothered, so they could go on home about their business, an' he told Mr. Humes——

The COURT: Wait now, just answer what you are asked.

Mr. SIMONTON:

Q. Tell it all—all that he did say.

A. Said that he ought to quit that business, it'd create disturbance, an' if he had listened to him it wouldn't have been nothin' of this.

Judge GREER: We will not cross-examine upon evidence that we hold is incompetent.

The COURT: I am satisfied, gentlemen, that that is not competent as this case comes to you, and I withdraw that from you and
333 exclude that from your consideration.

(To this ruling the district attorney excepted.)

SAMUEL GREEN (colored), being recalled, was further examined by Mr. Simonton as follows:

Q. Were you a pensioner?

A. Yes, sir.

Q. Did you — Stephen Ray?

A. Yes, sir.

Q. Did you know him well?

A. Yes, sir.

Q. Is he living or dead?

(Objected to by counsel for defendant as original evidence and incompetent.)

A. He is dead.

Mr. SIMONTON:

Q. I want to ask him if at some time in this year Stephen Ray was living or dead, and, to make it short, will ask him how long he has been dead?

The COURT: Ask him that question as a circumstance.

A. He died last July; was a year ago, 1894.

Q. July of 1894?

A. Yes, sir.

Q. Do you know whether he was a pensioner or not?

A. Yes, sir.

Q. He was?

A. Yes, sir.

The COURT: The witness Franklin stated, if he did not state it in answer to any question by the Government, that he never did

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sign any check or other thing as a witness or attesting wit-
334 ness unless the person was present or some one claiming to be the man; and now this is offered as a mere circumstance, for what it is worth, tending to show that in this instance he may have done that. Of course, if there was some one present claiming to be that man it will not be contradiction; but if the jury believe there was no one present claiming to be that man, this will go for what it is worth.

Judge GREER: We will not detain the court with any cross-examination.

The district attorney offered in evidence the calender of 1894, so that it might identify the dates.

This was all the evidence offered in this case.

His honor the trial judge charged the jury as follows:

335 *Charge of the Court.*

Circuit Court of the United States, Western District of Tennessee.

UNITED STATES } No. 1982.
vs.
L. W. HUMES.

GENTLEMEN OF THE JURY: The indictment against the defendant in this case and on which he has been put to trial is predicated on section 5485 of the Revised Statutes, which reads as follows:

"Any agent or attorney, or any other person instrumental in prosecuting any claim for pension or bounty land, who shall directly or indirectly contract for, demand, or receive or retain any greater compensation for his services, or instrumentality in prosecuting a claim for pension or bounty land than is provided in the title pertaining to pensions; or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a high misdemeanor, and, upon conviction thereof, shall for every such offense be fined not exceeding five hundred dollars, or imprisonment at hard labor not exceeding two years, or both, at the discretion of the court."

336 This indictment as originally drawn and returned into court by the grand jury contained nine counts, but as the case now comes to you, in view of the previous record thereof, the defendant is on trial on only three of those counts, and in the discharge of your duty you are concerned with only the three, viz., the first, third, and seventh counts in this indictment. The first one reads as follows: "The grand jurors of the United States within and for the western division of the western district of Tennessee, in said sixth circuit, duly elected, impanelled, and sworn and charged to inquire in and for said district aforesaid, in said circuit, upon their oaths present that L. W. Humes, yeoman, of the county of Shelby, State of Tennessee, and late of the circuit aforesaid, to wit,

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on the first of April, 1895, in the county of Shelby aforesaid, State of Tennessee, and in the circuit and division of the district aforesaid, to wit, Memphis, in said county and within the jurisdiction of this court, unlawfully and with force and arms did wrongfully withhold from William Anderson a large sum of money, to wit,
337 $486.50, the same then and there being part of pension money allowed and due by the United States to the said William Anderson, and the said Lowry W. Humes then and there being agent for and a person instrumental in prosecuting a claim of said William Anderson for a pension aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

The third count is: "And the grand jurors aforesaid upon their oaths present that the said Lowry W. Humes, on the first of April, 1895, at Memphis aforesaid, in the division and district aforesaid, unlawfully did wrongfully withhold from one Isaac Bloodson a large sum of money, to wit, $517.20, the same then and there being part of the pension allowed and due by the United States *and* the said Isaac Bloodson, and the said Lowry W. Humes then and there being an agent for and a person instrumental in prosecuting a claim of said Isaac Bloodson for the pension aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

And count seven is as follows:

338 "The grand jurors aforesaid upon their oaths aforesaid further present that the said L. W. Humes, on the first of April, 1895, at Memphis aforesaid, in the division and district aforesaid, unlawfully did wrongfully withhold from one Joshua A. Haynes a large sum of money, to wit, the sum of $116.00, the same then and there being part of the pension money allowed and due by the United States to said Joshua A. Haynes, and the said L. W. Humes then and there being agent for and a person instrumental in prosecuting the claim of said Joshua A. Haynes for the pension aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

These three several counts in the indictment charge the defendant with independent and distinct offenses growing out of distinct transactions—viz., in the first count he is charged with withholding from William Anderson a part of a pension due to Anderson, and in the third count the charge is in respect to the Bloodson pension claim and withholding that from him, and in the seventh count with the Joshua A. Haynes claim or pension—and the defendant is on
339 trial on each of these counts. It is competent for the jury, in such disposition as they make of the case, to convict the defendant, if they convict him at all, on all of the counts—three of the counts—and in respect to all three of the transactions or it is competent for the jury to convict him on one or more and acquit him on one or more. The defendant, by his plea, says he is not guilty of the charge, and, having thus denied the charge, it devolves upon the Government, before it can ask a conviction, to es-

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tablish his guilt by proof, on one or more of the counts, to the satisfaction of the jury and beyond a reasonable doubt.

If the Government has so established his guilt by proof on one or more of the counts or all of them, then the jury should convict. If the Government has not so established his guilt on all or any of the counts, then the jury should accordingly acquit. The defendant is presumed to be innocent, as every other citizen within the peace of the State is presumed to be. It is a presumption that attends him at all times, under accusation as well as otherwise, and is an answer to any accusation against him until that presumption is overturned by proof on the part of the Government which
340 establishes his guilt beyond a reasonable doubt. Now, the rule in a criminal case in respect to the quantity of proof necessary is different from what it is in a civil case. In a civil case the jury may decide the case according to the preponderance of the testimony—that is, as it may weigh in favor of the one side or the other in the scale of the controversy—but in a criminal case and as against the defendant that is not sufficient. The proof must satisfy the jury of his guilt beyond a reasonable doubt. Now, what is a reasonable doubt is a matter somewhat easier of conception than definition, but the proof of his guilt, in order to overturn the presumption of innocence, should be such as to exclude all reasonable doubt. It doesn't necessarily exclude all doubt. By a reasonable doubt is meant a doubt arising out of the evidence in the case or the want of sufficient evidence. It is not a doubt suggested by the imagination outside of the proof. It is not a doubt suggested by any feeling of mercy, by any feeling of sympathy, for the one side or prejudice against the other; but is an honest, substantial
341 misgiving as to the guilt of the defendant, after the jury has attentively and conscienciously weighed or considered all the testimony in the case on both sides. If, after you have considered all of it with the view honestly to ascertain the truth and with no other motive (as you will), you are not satisfied beyond a reasonable doubt, why you should acquit. If, after you have so considered it, the jury believes or feels that notwithstanding the proof the defendant may be innocent, that is a reasonable doubt and the defendant should be acquitted. If, after the jury has carefully considered the evidence faithfully and earnestly with a view to ascertain and declare the result, the jury is unable to say how it is, why that is a reasonable doubt, and the defendant in such a condition of your mind as that is entitled to an acquittal. If, however, it excludes all reasonable doubt after the exercise of your reason and judgment as men, why then there would be no reasonable doubt, of course, and the defendant should be convicted. Now, the defendant is permitted to testify in his own behalf, and the fact of his motive
342 or interest to escape punishment no longer disqualifies him as a witness. He is a competent witness, and it becomes your duty to accept him as competent and to duly weigh and consider his testimony, and the motive that he labors under, no longer disqualifying him as a witness, goes to his credibility and is to be considered by you as a circumstance in determining what weight

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you will give to his testimony given in his own favor. You should consider the fact that he labors under a strong motive to escape conviction and punishment or disgrace by testifying to a state of facts that exculpate him from the charge against him, and you are at all times to weigh what he says in connection with that circumstance as going to his credibility, and, having done so, you give to his testimony such weight as you may think it entitled to under all the circumstances. You will, of course, look to his manner, as you would the manner of any other witness on the stand, and the reasonableness or unreasonableness of his testimony; to its agreement or disagreement with your experience and with the other testimony in the case, both positive and circumstantial.

343 If there is a conflict of evidence, as I think there is, in this case, it is your duty first to so reconcile the evidence, if you can do so, as to make each witness or set of witnesses speak the truth. If the conflict is irreconcilable or of such a character as that it cannot be reconciled by the jury consistently with honesty on the part of the witness, then it is the duty and the province of the jury to say which witness or set of witnesses has stated the truth and which has not. If in what the court says to you in restating the testimony or in indicating the inferences to be drawn from it the court misstates the testimony, according to your recollection, or if the court expresses a view of it, if it does express any, not in accordance with your view after you have carefully considered it, it is your duty to follow your own recollection and your own view, the court merely meaning to try to assist you by such instructions as may be properly given; but it is your duty to finally pass upon the question of the defendant's guilt or innocence. Discrepancies between witnesses as to time, growing out of the frailty of human memory, *is* ordinarily not a circumstance that affects the tes-

344 timony of or discredits a witness. It is too common an experience that memory fails as to dates, time, and distance, and it is only when the jury believe that a date has been deliberately fixed upon and adhered to with a view to pervert the fact that that would be a circumstance that discredited a witness'es testimony. Now, with these general observations that are applicable and will be kept in mind by you throughout in the case, we come to the testimony in the case, and in respect to that it appears from the statute, as you have observed, that it is necessary in order to make the case against the defendant (first) that he must have been the agent or attorney of the pensioner or he must have been instrumental in the prosecution of the pension claim before he falls within the category of the persons who are subject to the provisions of the statute, and (secondly) he must withhold from the pensioner all or a part of what was due the pensioner claimant, so that two propositions are necessary to be established: That def't was an agent or instrumental in the prosecution of the claim, and, secondly, that he withheld from the pensioner money that belonged to the pensioner, some part of the pension that was allowed.

345 Now, desiring to get the jury down to the real issue in this case as it comes to you, leaving the jury free to find for itself,

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the court is of opinion that, considered in reference to either the Government's proof or the defendant's and with reference to the written evidence or the oral, that the defendant was instrumental in the prosecution of these claims in such sense as that if he withheld the money he would be within the provision of the statute and guilty. That brings you to the fact, then, of whether or not he did withhold these pension claims. Taking up, then, the count in reference to the Anderson claim: Now, there is a direct conflict between the defendant and his own evidence and that of the claimant, Anderson, as to who got the proceeds of that check. Anderson states that he had paid him $50.00 of it at his office in person and in money, and that that is all of it that he ever obtained, whereas the defendant Humes says that he delivered to him the check for the full amount, and that he went away from his office to the bank to get it cashed, and that he had nothing further to do with it and knew no more of it. Now, both of these statements can't be true.

346 Whether they are deliberately false or the result of mistake or misconception, they are not both true. The claimant stands in his testimony directly opposed to that of the defendant upon that point, and that is the real issue in respect to this Anderson transaction, viz., who got the proceeds of that check? If Mr. Humes got and retained the proceeds or retained any part of it above the notary's fee, then he is guilty, whereas if Anderson got it that is the end of the case so far as that count is concerned, or if, under the rule stated, you have a reasonable doubt about how that is the defendant is entitled to an acquittal. Now, then, in such a conflict as that you naturally look for corroboration of Anderson on the one hand and Humes on the other, and with that view I will call your attention briefly to what the testimony of supporting witnesses on the one side and the other is as I recollect it. Anderson says he went immediately to the stock yard, to Peter Finley, with his hand on the $50.00 from the time he left Humes' office until he got to the yard, and that he there made known the fact to Peter Finley, and Peter Finley counted the money, and in that Peter Finley substantially agrees with Anderson as to that fact. Afterwards Peter

347 Finley says that he went in company with Mr. Laughlin, but in the absence of Anderson, to the office of Mr. Humes and inquired about this $50.00 that had been paid to Anderson or, rather, about the Anderson pension; that they went there for the purpose of finding out why it was that Anderson got no more than fifty dollars, and they state—himself and Mr. Laughlin, who appears to be an intelligent man and is a member of this bar—they went to Mr. Humes' office, as they stated, and called him into another room and asked him about this thing. They say that Mr. Humes said that the check had come that morning (I am quoting it substantially), and that ten dollars of it went as an attorney's fee, and that he paid Anderson fifty dollars, and if you believe that Humes stated that, that corroborates Anderson's testimony as to his version of this transaction, and if you believe that Mr. Humes deliberately and understandingly made that statement to Peter Finley and Mr. Laughlin, as they understand it, viz., that he paid him

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$50.00 and retained $10.00 as attorney's fee, it would be a strong circumstance against Mr. Humes. It is contradictory to what he now states before the jury on the stand, and it is inconsistent
348 with the transaction as he now details it, and is inconsistent with his innocence, as it is now maintained. Now, did they understand Finley and did Finley understand them in that conversation? Its value depends on the fact, of course, that it was deliberately made by Humes, and that it was correctly understood and communicated by Finley and Laughlin. I- requires that to make it of value as an admission; but if understood, and correctly testified to by them, and deliberately made by Humes, as I have stated to you before, it becomes a strong circumstance. It is impossible that what he said then could be true, and that what he now says could be true; and it is impossible, in view of the facts now before you, that a statement of that sort could be true and he could be innocent, because if he paid him $50.00 he don't pretend that he otherwise paid him the pension money, and it would warrant you in the inference that he withheld the remainder of it. Now, in determining whether that was deliberately and understandingly made, you may look to the circumstances in which you went to Mr. Humes' office and the time that was devoted to the
349 inquiry of the answer—if it was only a few minutes, to that circumstance; if it was where he was pressed with other business, to that circumstance—and determine whether it was deliberately and understandingly made, because if it was, in the court's opinion, that is a strong circumstance in this case. Now, then, when you turn away from that side of it and the corroboration, Mr. Humes says that Mr. Laughlin and Mr. Finley misunderstood him; that he said to them that there was due Anderson about five hundred and fifty dollars, and that the question of whether it was all or not was not mentioned (I am stating my recollection of his testimony, and it is for you to remember it), and that they seemed satisfied with that and went away, and that it was but for a moment and casual, and that they misunderstood him if they understood it as they say. Now, how is this? That is a question for you to say, if you can.

Mr. Humes denies that, and denies that he paid Anderson $50.00 in money at all on that occasion or a cent; and while we are on the subject of fees I may as well get that out of the way, be-
350 cause there is enough of disputed matter here. Mr. Finley didn't claim in his testimony before you that he had any charge against that fund or any claim against Anderson on account of which he could have retained it or held it, except the fifty cents, notary fee, and says that he did not retain any more, but that he turned him over the check, and that fifty cents was brought back to him by Saunderlin. Now, then, the section under which he is indicted is a section intended——

JURYMAN: You had reference to Mr. Humes, didn't you? You said Mr. Finley.

The COURT: Yes, sir.

Under the section under which he is indicted it is intended to

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prevent withholding from the pensioner any part of his claim, and it would under that section have been lawful to charge his notary fee of fifty cents; and the subsequent statute, the one under which this pension is issued, prohibits a notary from charging that fifty cents, and requires that he shall perform that service for nothing; but if Mr. Humes did charge the fifty cents, the subsequent statute doesn't make that a criminal
351 offense; and if he charged the fifty cents and is, without more, otherwise guiltless about this matter, there is no offense. So that, did he withhold from Anderson all or any substantial part of that pension? If so, he is guilty, and you should convict him; and if not, or if you have a reasonable doubt, acquit him. Now, in addition to Mr. Humes' statement on that point, he supports himself by the witness Sanderlin, a colored man, who swears that he went with Anderson, a colored man, to the bank, identified him, and that he obtained the money on that check; that he knows Anderson as a soldier; was acquainted with him in the army. Now, if that is true, what Anderson said about it cannot be true, and if what Sanderlin says is true, if Mr. Humes had made the statement to Finley and Laughlin, which they say he did, it would not have been a true statement; so that there is, on that point, a hopeless conflict in the evidence—in its terms and its implications—and you have got that to deal with. Now, that is what Sanderlin says, and Mr. Humes, Junior, the half-brother of the defendant, upon that same
352 point states that he remembers cashing the check and paying the money to Anderson, and that it was done on the 8th of October instead of the 29th, and the time and method of payment is in conflict in that respect. Anderson and the witnesses and circumstances, so far as they corroborate Anderson, tend to show a payment on the 29th of October, whereas the books of the bank show that the check, whoever got it, was paid on the 8th of October. Now, did Humes get that check on the 8th of October and keep it until the 29th, and then pay the fifty dollars to Anderson, as Anderson states and as the corrob-ating testimony of Anderson shows, or was it paid on the 8th to Anderson or to Humes? Now, Young Humes, and by that I mean his half-brother for the present, says that he remembers the transaction; has a personal recollection of it, because it was a large amount paid to a darky and because he afterwards saw Anderson and remembered when he did see him, and recognized and now recognizes him as the
353 man to whom he actually paid the cash. That is the corroboration of Humes so far as the Anderson transaction is concerned. The Government's contention is that in fact Humes took that check there on the 8th of October himself and procured it to be cashed, and that the younger Humes has no recollection of it at all except such as he has, in the interest of his brother, actually led himself to believe since, and that on the 29th of October that he kept that money until that time and then paid Anderson fifty dollars, as Anderson says, and in respect to which he is corroborated by Finley and Laughlin and by the elder Finley, so far as the date when his cow was paid for is concerned. Now, you have got the con-

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flict to deal with. What interest did Finley have and Laughlin have to testify to anything but what they understood to be the truth, and did they correctly understand it? You may look to the fact that Sanderlin was in the employ, to an extent, at least, of Humes, and that the younger Humes was his half brother, and to every other
354 fact and circumstance in the case that may enable you to decide that manifest conflict between the proof on the part of the Government and that on the part of the defendant, so far as the Anderson transaction is concerned. Among other things, you may consider, for what it is worth, the fact as the case comes before you that Mr. Humes, so far as it is developed, was doing or attempting to do this work for nothing but the notary's fee, as a question affecting his testimony. Then, on the part of Anderson, you may consider the fact whether Anderson knew, before he drew that pension, the approximate amount of it, and the fact that personally he made no complaint about it, and what would or what has been Anderson's motive for undertaking to claim that he only got $50.00 when he got all. These are all things for you to consider.

Another circumstance is, if Humes started out to swindle Anderson out of his pension you may consider the fact that, according to what Anderson says, out of a sum of $536.40 Humes took all of it except $50.00. It is not a case where he undertook to take
355 some of it—a small part of it—but took all of it except $50.00. If Humes withheld from Anderson his certificate of pension and the other evidence of the amount of his pension with the view to keep concealed the real amount from Anderson and his counsel or his friends, that would be a circumstance against Mr. Humes, if that was his purpose, if you believe that, and you may consider the fact if it be so that he withheld them as bearing on that. If, however, he offered the papers to Anderson as substantially he says, and Anderson simply declined to take the papers, why then there would be nothing improper in Mr. Humes putting the papers away. Now, I have undertaken, somewhat tediously, to direct your attention to this conflict over the Anderson transaction because the most proof in the case is in regard to that and the most extensive conflict is in regard to that, and the testimony on behalf of the Government, particularly in the corroboration by Finley and Laughlin,
356 makes the case against Humes in regard to the transaction stronger than it is in regard to the other, and if you should convict the defendant Humes on the Anderson transaction, it wouldn't necessarily follow that you would convict him on the third and seventh counts, in regard to the Bloodson and Haynes transactions. Nothing would follow one way nor the other about that, because the fact that a man is guilty of a crime in respect to one transaction is not a ground on which you could convict him on another. Each offense must stand on its own merits. Having thus called your attention to the testimony and attempted to sum it up and to state the conflict in regard to the Anderson claim, I pass for a moment, and only a moment, to the Bloodson transaction, because what has been said to you generally and in respect to the Anderson claim applies in a large way to the Bloodson claim. Now, Blood-

POOR COPY

son states that Humes paid him out of $567.20 just $50.00 also, and that is all that he ever got. Bloodson says that he got that on the 27th of December, after Christmas, what
357 Humes did pay him. Humes says that he endorsed and delivered the check to him. I should have said, in stating the evidence in conflict on the Anderson claim, that in addition to what Humes says, and Sanderlin, and the younger Humes says, that that colored man, Franklin, also says, as you will remember, that he saw Anderson leave the office in company with Sanderlin to go to the bank, with the check in his hand, and so that corroborates Mr. Humes' statement on that subject. You have, then, Anderson, with such corroboration as the two Finleys and Laughlin furnish, and Humes, with such corroboration as Franklin, Sanderlin, and Mr. Humes, his half brother, furnish, to deal with, together with the circumstances, as you may find it, about the time when that payment was made. Now, passing to Bloodson: Humes says, on the contrary, that he paid Bloodson the 24th of December, the day before Christmas—that is, that he endorsed the check and delivered it to him just as he did in the Anderson case, and that he told Sanderlin to go with him to the bank and show it to him; and
358 Sanderlin says he did so, and went to the door-step and nodded to the cashier, Mr. Humes, Junior, which was recognized as indicating that he knew him, and Mr. Humes says that he cashed the check; that he remembers it, and recognizes Bloodson on account of his peculiarly tall appearance and white hair and whiskers, and Franklin also says that Bloodson was there, and went off on that day, and Mr. Humes' son, in addition, says that he was at his father's office on the 24th day of December and saw Bloodson there, and saw him talking to his father, and says, practically, nothing beyond that. Well, of course, if Bloodson was there on the 24th day of December, as the son says, that corroborates what Humes says about that and what Sanderlin says about it, and would also corroborate what the half brother says about it, and Bloodson is corroborated in his statement by Mrs. Snyder and her daughter, who say that he spent the 24th at their house all day at work. Well, now, he couldn't have been there on the 24th all day at work and been here at the bank getting that money, and there is another conflict; and what has been said to you is applicable, in a general way, to that.

359 Then passing to the seventh count, which involves the Haynes transaction, Haynes says that the amount due Haynes was $232.40, and that out of that he gave him money, so that when he deposited $75.00 in the bank he had $41.00 left, and paid $1.00 of that on a debt that he owed, and carried home with him $40.00, which would make, I believe, $116.00, and would make exactly half the amount coming from him, except the odd cents. So that, as the case is testified to by these old colored men, Mr. Humes took all of Anderson's money except $50.00—took out of $536.40—and of Bloodson's $567.20 took all of that but $50.00, and took half of Haynes'. Now, of course, it is a minor matter, but in considering this testimony you take into account also the intelligence of the

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witnesses and their reliability as a medium for correctly understanding and correctly communicating the facts known to such witness. You look to their manner on the stand before you, whether that is frank, open, free. The fact of a witness'*es* ignorance don't discredit the witness. It is a circumstance merely to determine
360 how far he is reliable and how far he understood the situation and could tell it. An ignorant man could be just as honest as an intelligent one, so far as he could understand the fact. Now, this pension law, under which the defendant is indicted, is a provision intended to protect. It is a new phase of the old problem in legislation of protecting the weak against the strong, and was designed, among other things, to protect ignorant pensioners against all impositions by men who undertake to be instrumental in the prosecution of their claim and then withhold from them what was due them and convert it to their use. You take this case now and consider all the testimony, both direct and circumstantial, and in doing so you are simply discharging the duty which the law has devolved upon you, most likely unwillingly. The Government has brought you here by the power of its process and has put you in the jury-box, exacting from you some of your time, which every citizen owes the Government, and you have been sworn to try the case according to the law and the facts, and when you enter upon the discharge of that duty you dis-
361 miss from your consideration anything like prejudice, sympathy, friendship, ill will, or any such thing whatever. You will earnestly and conscientiously try to find out what the truth is and declare it without respect to persons, position, or other consideration, and after you have done that, if you are satisfied of the defendant's guilt beyond a reasonable doubt, so that your judgment and conscience would rest easy on a conviction, why, then, convict, and if you are not so satisfied acquit him. Now you can take this case, and the court will be in session until five o'clock, and, knowing that some of the jurors desire to get away, if I knew you would be able to dispose of the case tonight, I would open court to see if you are agreed tonight; but the jury may retire now and report about five, after having considered for that length of time whether you have agreed or whether you think you can agree tonight if the court is open; but you should not be in such hurry that you do not give this case the attention its importance demands.

362 The defendant asked the following special instruction, which was refused:

Unless you find from the evidence that the defendant was the att'y, agent, or other person engaged in prosecuting the pension claims of Anderson, Haynes, & Bloodson, then the court instructs you to find for the defendant. I think I have given this instruction in the general charge, &, believing the charge on this point is sufficiently full, further instruction is declined.

CLARK, *J.*

To which action and ruling of the court in so refusing to give said special instruction the defendant then and there excepted.

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Shortly after the jury had retired to consider of their verdict his honor the trial judge had them recalled and withdrew from their consideration the following portion of his charge, to wit:

"Among other things, you may consider for what it is worth the fact, as the case comes before you, that Mr. Humes, so far as it is developed, was doing or attempting to do this work for nothing but the notary's fee as a question affecting his testimony."

The jury returned a verdict of guilty as to the counts
363 charging wrongful withholding of the pension money of William Anderson and of Isaac Bloodson and found the defendant not guilty as to the charge of wrongful withholding the money of Joshua Haynes.

The defendant then moved for a new trial, and on this motion offered the affidavits of Lavinia Boyd, Calvin Reed, J. M. Marsh, G. H. Purcell, and L. W. Humes as follows:

Affidavit of Lavinia Boyd.

Filed Dec'r 16th, 1895.

Circuit Court of the United States, Western District of Tennessee.

UNITED STATES
vs.
L. W. HUMES. } No. 1982.

Q. What is your name?
A. Lavinia Boyd.
Q. Where do you live?
A. In the city of Memphis.
Q. What were you doing in 1894, towards the latter part of the year?
A. If it was cotton-picking time I was picking cotton.
Q. Before you went down to pick cotton what were you doing?
A. I was washing.
Q. Where did you pick cotton last year?
A. Major Ferguson's.
Q. In Arkansas?
A. Yes, sir.
Q. Did you go late in the season or early in the cotton-picking season?
A. I went early in the season.
Q. Do you know Mr. Lowry Humes?
A. Yes, sir.
364 Q. How long have you known him?
A. Ever since Mr. Deadrick took my papers to him.
Q. Are you a pensioner?
A. Yes, sir.
Q. When did you get your pension?
A. I got — in June.
Q. Last year who was looking after it for you?

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A. Mr. Humes.

Q. Did you go to Mr. Humes' office at any time last year, in the early part of October?

A. Yes, sir.

Q. Why did you go there?

A. I went there to tell him I was going away and if he wanted me to tell him where I was at.

Q. Where were you going?

A. I was going to Maj. Ferguson's farm to pick cotton.

Q. Did you go to the farm?

A. Yes, sir.

Q. How long were you gone?

A. About two months.

Q. And that, you say, was in the early part of October?

A. Yes, sir.

Q. As you went to Mr. Humes' office to deliver that message or as you were coming away did you see the man they call William Anderson?

A. I seen that old man that they call William Anderson. I was going up the steps and that other one was standing down the steps, and he says, This man has got his check and he is going to
365 the bank to get his money. Mr. Sanderlin says, This old man has got his check, and I went on up by Mr. Anderson and I says, Are you married? and he mumbled out something, I don't know what it was and I didn't take enough notice to know what it was, but I noticed enough to know it was him.

Q. Did he have anything in his hand?

A. He had a white piece of paper, but what it was I don't know.

Q. Who was the man standing at the bottom of the steps?

A. Sanderlin.

Q. You know Sanderlin very well, do you?

A. Yes, sir.

Q. Have you seen Anderson since that day?

A. Yes, sir.

Q. He is the same man that you saw on the steps?

A. Yes, sir; he ain't acquainted with me and I ain't acquainted with him, but I just knowed him by his mouth and head. He was an ugly old man.

Q. What caused you to ask if he was a married man?

A. I was just going up the steps and asked him that because I didn't have nothing else to ask him.

Q. You are quite sure that you saw Sanderlin there at the foot of the steps?

A. Yes, sir; I seen him.

366 Q. You were going up and Anderson was coming down with a piece of paper in his hand?

A. Yes, sir; but what it was I couldn't tell you. I didn't notice it that much. I wasn't interested in it.

Q. You can't read and write, can you?

A. No, sir; I can't read and write.

Q. What was it that the man at the foot of the steps said?

POOR COPY

A. He said, Here is an old man that has got his check and going to the bank to get his money. He didn't call his name; he said "old man," and I went on up the steps and got close to him and asked him, Are you married? and he said something, but I don't know what. I didn't pay any attention because he was a stranger, and I went on. I didn't know him.

Q. How long were you in Mr. Humes' office?

A. I reckon about 10 or 15 minutes.

Q. Did you notice whether Anderson continued on the way down to the bottom of the steps or not?

A. Yes, sir; I went on and he was going on down the bottom of the steps.

Q. Did he stop there or go on?

A. I don't know, sir, whether he stopped or not.

Q. They were there at the bottom of the steps together the last you saw them?

367 A. Yes, sir.

Q. Where do you live?

A. 32 De Soto street.

Q. What do you do all the time?

A. I wash and iron when I can get it, and I cook all the time; but I have got no regular place now. I was going to Raleigh to cook, but I didn't get the place.

her
LAVINIA x BOYD.
mark.

Witness:
S. A. PERSON.

Sworn to and subscribed to (by witness making her mark) before me this 16th day of December, 1895.

R. G. BROWN,
Notary Public.

Circuit Court of the United States, Western District of Tennessee.

UNITED STATES
vs.
L. W. HUMES. } No. 1982.

Affidavit of Calvin Reed.

Filed Dec'r 17, 1895.

Q. What is your name?
A. Calvin Reed.
Q. Where do you live?
A. 670 Orleans street, city of Memphis.
Q. How long have you been a citizen of Memphis?
A. About forty years or more.
Q. What is your business?
A. I am a plasterer by trade.

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Q. Are you acquainted with the defendant, L. W. Humes?

A. Yes, sir.

368 Q. How long have you known him?

A. Eighteen or twenty years, I reckon.

Q. Are you a pensioner?

A. Well, I have a claim against the Government, but I have never drawed any.

Q. Your pension has not been issued?

A. No, sir.

Q. Do you know Isaac Bloodson?

A. No, sir; I really don't know him.

Q. Do you know him by sight?

A. Yes, sir.

Q. Do you remember to have seen him in the city of Memphis last December, the day before Christmas, at or near the Mechanics' savings bank, corner of Main and Madison streets.

A. I remember meeting a man there at the bank of his description about that time.

Q. Describe the man.

A. Well, he is a very aged man, tall, white hair and whiskers.

Q. Have you seen him since?

A. Yes, sir; I saw him at the custom-house.

Q. And you have understood since that his name is Isaac Bloodson?

A. Yes, sir.

Q. Who was with him when you saw him at the bank at the time stated?

A. Cornelius Sanderlin.

Q. What did Bloodson seem to be doing?

369 A. He seemed to have a check in his hand, and going in the bank, and I called Sanderlin's attention. I wanted to see him on the matter of the old soldiers preparing to organize an army post.

Q. That was Sanderlin you talked with?

A. Yes, sir; and he then—he told me to wait a moment, and he walked up the steps with this old gentleman, and I noticed him bow his head to the parties inside. I didn't know what was his object, and me and him stood there and talked, and the man came out with the money—I don't know how much he had—and gave Sanderlin a piece of money, and I don't know how much.

Q. Was the man that had the money and went in with the check quite a tall man?

A. Yes, sir.

Q. State whether or not he is a man when you once see him if you see him again you would be likely to remember him from his appearance.

A. I remembered him.

Q. Do I understand you to say you have seen him since?

A. Yes, sir; I have seen him, and his name was told to me as being Isaac Bloodson.

Q. Where did you see him?

H POOR COPY

A. Custom-house, *Q* and the man that was called Isaac
370 Bloodson there—affiant—is the same man that I remembered seeing going in the bank with the check.

Q. When was it that you saw him at the custom-house?

A. Last week and week before last, too.

CALVIN REED.

Subscribed and sworn to before me this 17th day of December, 1895.

C. D. M. GREER,
[L. S.] *Notary Public.*

Circuit Court of the United States, Western District of Tennessee.

UNITED STATES
vs.
L. W. HUMES. } No. 1982.

Affidavit of J. M. Marsh.

Filed Dec'r 18th, 1895.

Q. What is your name?

A. J. M. Marsh.

Q. What is your business?

A. Candy manufacturer.

Q. Where do you do business principally?

A. Corner of Court and Main streets, southwest corner.

Q. And how long have you been in business at that place?

A. About five years.

Q. Do you know Lowry W. Humes?

A. I know him by sight. I never spoke to him in my life.

Q. Do you know where his office is now?

A. No; I don't.

Q. Do you know where it was in October, 1894?

A. About 15 Court street.

371 Q. How far is that from the place where you do business?

A. About fifty or sixty yards.

Q. Do you know a negro man by the name of Sanderlin, who works for Mr. Humes?

A. I don't know him by name. I know the big, fat negro that works for Mr. Humes, by sight.

Q. How long have you known him by sight?

A. Ever since he has been up there at Mr. Humes' office.

Q. How long have you known Mr. Humes by sight?

A. I have known him, I reckon, for twenty years, by sight.

Q. In going from Mr. Humes' office, where it was in October, 1894, to the Mechanics savings' bank, corner of Main and Madison streets, one would pass by your wagon?

A. Yes, sir.

Q. In October, 1894, did you see Sanderlin pass by your wagon

BLEED THROUGH

with another negro, and, if so, tell what, if anything, was said either by Sanderlin, or by yourself, or both of you, as they were passing?

A. I don't know the exact time, but I think it was about that time I saw Sanderlin with another negro pass by my wagon, and as he passed he remarked, I am going to take this old man
372 up to the bank and get him a pile of money that big (affiant motioning with his hands).

Q. Did you see the old man that he had reference to?

A. Yes, sir; but it has been so long ago that I don't know hardly whether I would know him now or not.

Q. What is your best recollection of his appearance?

A. Well, he was an old man and tolerably black.

Q. Do you remember whether either of them had a paper in his hand? and, if so, tell what it looked like, and which one had it, if you remember.

A. I know that one of them had a piece of paper in his hand, but I don't recollect which one.

Q. What did — appear to be?

A. It looked like it might be a check.

Q. Did you see Sanderlin at any time on the same day, after that?

A. Yes, sir.

Q. How long afterwards?

A. Only a few minutes.

Q. What did he say to you then, if anything?

A. He was on his way to Humes' office, and as he passed he said, That old man got $500.00.

Q. And you say you have never spoken to the defendant, Humes.

A. No, sir: I never spoke to him in my life. I have known
373 him nearly all my life, but never spoke to him.

Q. You are a white man, are you?

A. Yes, sir.

J. M. MARSH.

Subscribed and sworn to before me this December 18, 1895.

[L. S.] C. D. M. GREER,
Notary Public.

Circuit Court of the United States, Western District of Tennessee.

UNITED STATES,
vs.
L. W. HUMES, } No. 1982.

Affidavit of G. H. Purcell, Taken in the City of Memphis on the 23d Day of December, 1895.

Filed Dec'r 28, 1895.

Q. What is your name?

A. G. H. Purcell.

Q. Where do you reside, and what is your business?

POOR COPY

A. I reside in Birmingham and I am a postal clerk.

Q. What caused you to come to Memphis at this time?

A. I came at the request of Mr. Humes and his lawyer, Mr. Weakley, at Birmingham.

Q. Did you ever occupy Mr. Humes' office, or a part of his office, on West Court street; and, if so, at what time, or about what time?

A. I used the typewriter over there in his office between the 5th and 25th of October, 1894.

374 Q. Had you been in the habit of going to his office prior to that time?

A. I don't recollect going over there before about the 5th of October.

Q. After you carried your typewriter over, did you remain continuously in the office for any time; and, if so, for how long?

A. Well, it was Mr. Humes' typewriter. I stayed in the office continuously for about eight days.

Q. After that, were you in the office, back and forth, from time to time?

A. I believe I went back once or twice.

Q. Prior to that time, as I understand, you were in the office, back and forth, from about the 5th of October?

A. Yes, sir.

Q. State whether or not you were called upon to witness signatures or marks of persons having checks for pension money?

A. I was called upon to witness marks. I don't know about checks for pension money.

Q. Have you recently looked at a check for $536.40, or about that sum, dated at Knoxville, October 3d, 1894, payable to the order of William Anderson, upon which a mark is made, with the words "William Anderson, his mark," written in connection with it, and on which, as a witness, the name of G. H. Purcell is written?

A. Yes, sir.

375 Q. When did you look at it?

A. On today, December 23d, 1895.

Q. Whose attesting signature is that of G. H. Purcell written on said check?

A. It was my own.

Q. Who wrote it?

A. I did.

Q. Did you write anything else in connection with it?

A. 98 Robeson street.

Q. Do you know why you came to write 98 Robeson street, Memphis?

A. I believe the note on the check says address in full.

Q. What do you mean by the note on the check—the memorandum on the back of it or on the face of it?

A. On the back of it.

Q. Do you have any recollection of the person who made that mark?

A. None whatever.

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Q. Would you have witnessed it unless the person had been present who made the mark?

A. No, sir.

Q. Can you remember now who called on you to act as a witness?

A. No, sir; I do not.

Q. Who else witnessed it beside you?

A. Mr. L. W. Humes, as his name appears on the back. I don't recollect it.

Q. You were then aware of the purpose for which you put your name there, were you not?

A. I guess so, as a witness.

376 Q. Can you recollect any of the circumstances, more than those you have stated, connected with the transaction.

A. No, sir.

Q. Do you remember an old negro man, fleshy, by the name of Sanderlin, who was about the office of Mr. Humes?

A. Yes, sir; I remember him.

Q. Do you remember whether or not he went with persons having checks, or started with persons having checks, to the bank to get them cashed?

A. I believe I saw him go out once or twice for that—once, I believe.

Q. Were the persons he went out with white or colored?

A. It seems to me that I faintly remember Sanderlin going out of the office with a negro once, to have a check cashed.

Q. Have you had occasion to recall the fact of your attestation of the mark on the check described in one of the foregoing questions until within the last three or four days?

WITNESS: You mean had I thought over it?

Q. Yes.

A. I have tried to recollect it within the last three or four days.

Q. But prior to that there was nothing to cause you to think about it or try to recall it since it occurred?

377 A. Nothing at all.

Q. Is there any fact or circumstance that would — you doubt that some person made the mark and represented himself as William Anderson, which you attested?

A. Nothing within my knowledge to cause me to doubt it.

Q. Do you know anything else in connection with the matter than what you have stated?

A. No, sir.

Q. Do you remember to have seen a yellow boy about the office of Mr. Humes when you were there?

A. Yes, sir; W. G. Franklin.

G. H. PURCELL.

Witness to signature of Purcell:

S. A. PERSON.

J. P. RIDGWAY.

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STATE OF TENNESSEE, }
Shelby County. }

Personally appeared before me, S. L. Finley, a notary public of the county and State aforesaid, S. A. Person and J. P. Ridgway, the subscribing witnesses to the foregoing affidavit, who, being first sworn, deposed and said that they are acquainted with
378 G. H. Purcell, the affiant, and that he acknowledged the same in their presence to be his act and signature upon the day it bears date.

Witness my hand this the 28th day of Dec'r, 1895.

[L. S.] G. L. FINLEY,
Notary Public.

Circuit Court of the United States, Western District of Tennessee.

UNITED STATES }
vs. } No. 1982.
L. W. HUMES. }

Affidavit of L. W. Humes.

Filed Dec'r 28th, 1895.

The defendant makes oath that he used due diligence to have the testimony of G. H. Purcell on the trial of this case. He wrote and telegraphed to points where he believed said Purcell could be found, but was not successful in ascertaining his whereabouts until after the trial and after the argument on the motion for a new trial. He learned by letter from Purcell's father that he had recently obtained employment as a postal clerk on the line of cars running from Greenville by Birmingham to Atlanta, Georgia. He employed counsel in Greenville and also in Birmingham, and suc-
379 ceeded in reaching him at Birmingham through the well-known firm of attorneys, Cabaniss & Weakley, and through Mr. Weakley succeeded in obtaining from his employer two days' absence in which to visit the city of Memphis and give his affidavit, which was completed at about 11.30 o'clock on the night of Dec. 23d, 1895, when said Purcell left to resume his employment, by the five-o'clock train, on the morning of the 24th of December. Affiant was not able, at that late hour of the night, to procure a notary public or justice of peace to qualify said Purcell to his affidavit, but the same was witnessed by the stenographer, Solon Person, and J. R. Ridgway, an employee in the Continental Bank building, where said affidavit was prepared. The same was typewritten and signed at 11.30 o'clock on the night of the 23d of December, as already stated, and is enclosed herewith. Purcell is the very person
380 who was one of the witnesses on the check of William Anderson for $536.40.

The affidavit of J. M. Marsh was offered on the motion for a new trial. I have no personal acquaintance with said Marsh, and was not aware of the fact that he knew anything that would be compe-

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tent and favorable to me on the trial of my case prior to the trial and until within a few hours before the argument on the motion for a new trial.

I pray that I may be allowed the benefit of these affidavits on consideration of the motion for a new trial.

L. W. HUMES.

Subscribed and sworn to before me this the 28th day of December, 1895.

WALTER MALONE,
Notary Public.

[L. S.]

It is agreed that as to the affidavit- of Lavinia Boyd and Calvin Reed they were under subpœna by defendant and present during the progress of the trial.

The grounds assigned for a new trial were the following:

Circuit Court of the United States, Western District of Tennessee.

UNITED STATES
vs.
L. W. HUMES. } No. 1982.

Statement of Grounds for a New Trial.

Filed Dec'r 28, 1895.

I.

381 Error in failing to instruct that if the jury believed from the evidence the check was not paid to William Anderson on the 8th of October, but to some other negro, that this would not justify a conviction of the defendant unless the evidence satisfied the jury beyond a reasonable doubt that the money, either directly or indirectly, through the hands of such other negro, reached the defendant, who wrongfully withheld $486.40 thereof, paying to William Anderson, on the 29th of October, 1894, or at some other day after the 8th of October, 1894, only $50.00, and wrongfully withholding the entire balance. The defendant was entitled to such instruction, applying the law to this particular and important aspect of the case, and especially so in view of the ground assigned as error under the III head.

II.

It is respectfully submitted that his honor erred in taking from the jury all consideration of the evidence tending to show whether or not the defendant was the attorney, agent, or a person
382 instrumental in procuring the pension money alleged to have been withheld by the defendant. This question should have been submitted to the jury upon the evidence in the case; and, touching the same, the jury should have been instructed that they must find the fact to be, from the evidence, beyond a reasonable doubt, that the defendant was attorney, agent, or instrumental in

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procuring said pension money, and if the evidence failed so to satisfy them that then their inquiry should end and they should return a verdict for the defendant.

III.

The following portion of the charge contains error: "The Government's contention is that, in fact, Humes took that check there on the 8th of October, himself, and procured it to be cashed, and that the younger Humes has no recollection of it at all except such as he has, in the interest of his brother, actually led himself to believe since, and that on the 29th of October that he kept that money till that time, and then paid Anderson $50.00, as Anderson
383 says, and in respect to which he is corroborated by Finley and Laughlin and by the elder Finley, so far as the date his cow was paid for is concerned." The tendency of this instruction, it is submitted, was to produce the impression on the minds of the jury that there was some evidence in the case showing that the defendant took the check, in person, to the bank on the 8th day of October, 1894, and on that day received from the cashier the amount of the check. In support of this view there is not a particle of evidence. Mr. Humes did not go in person to the bank. The check was paid to Anderson, or some other negro. This under the proof is beyond doubt.

IV.

It is respectfully submitted that the defendant's case may have been prejudiced by the following instruction: "Among other things you may consider for what it is worth the fact, as the case comes to you, that Mr. Humes, so far as it is developed, was doing or attempting to do this work for nothing but the notary's fee, as a question affecting his testimony." It is true that after the jury had
384 been considering of their verdict for some time his honor withdrew this instruction, and that his purpose was to do so in such way as would leave no effect whatever upon the minds of the jury. This is always difficult, but almost impossible in this case, where the charge is, in substance, the fraudulent withholding of the money of the pensioner, and the circumstance referred to tends to disparage the business and stain the reputation of the defendant.

The tendency was to lower and depreciate. Withdrawing, no matter how fully done, it is submitted, could not remove the effect already produced.

V.

The tendency of the following instruction, it is submitted, was to prejudice the cause of the defendant: "Now I have undertaken, somewhat tediously, to direct your attention to this conflict over the Anderson transaction, because most of the proof in the case is in regard to that, and the most extensive conflict is in regard to that, and the testimony on behalf of the Government, particularly in the

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corroboration by Finley and Laughlin, makes the case against
385 Humes, in regard to that transaction, stronger than it is in regard to the other." It is this particular part of the instruction which was calculated to give undue prominence to the testimony of Finley and Laughlin, viz: "And the testimony on behalf of the Government, particularly in the corroboration by Finley and Laughlin, makes the case against Humes in regard to that transaction stronger than it is in regard to the other."

VI.

It is respectfully submitted that his honor may have misled, and probably did mislead, the jury in the emphasis which he laid upon the testimony of Finley and Laughlin, and in what he said in regard thereto, and which was repeated there several times.

This, taken in connection with what was said in regard to the same testimony at the close of his honor's review of the testimony, tended to give the testimony of Finley and Laughlin undue prominence.

VII.

In calling attention to the circumstances that might lessen the credit to be given to the witnesses of the defendant, it is submitted that a similar instruction would have been given in regard to
386 the testimony of Laughlin and Finley, but instead of doing so his honor instructed in regard to them as follows: "Now, you have got that conflict to deal with. What interest did Finley and Laughlin have to testify to anything but what they understood to be the truth, and did they correctly understand it?" It is submitted that, inasmuch as relationship and employment are mentioned as circumstances tending to weaken the testimony of defendant's witnesses, the jury should have been instructed that if Laughlin was the counsel of Anderson, and Finley his landlord and self-constituted protector, undertaking to look after his interests, that this would be a circumstance which might be looked to in weighing their evidence, and especially as, immediately after what his honor says in respect to Finley and Laughlin, the jury are told that they may look to the fact that Sanderlin was in the employ, to an extent, at least, of Humes.

VIII.

The tendency of the following, which was repeated in the instruction in regard to Bloodson, whether so intended or not, probably injured the defendant's case in the estimation of the jury, viz:

387 "Another circumstance is, if Humes started out to swindle Anderson out of his pension, you may consider the fact that, according to what Anderson says, out of $536.40 Humes took all of it except $50.00. It is not a case where he undertook to take some of it—a small part—but he took all of it except $50.00."

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IX.

The following portion of the charge contains error, viz: "Now, of course, it is a minor matter, but in considering this testimony you can take into account also the intelligence of the witnesses and their reliability as a medium for correctly understanding and correctly communicating facts so known to such witness-." The error consists in stating that the intelligence of the witnesses and their reliability is a minor matter.

X.

It is nowhere mentioned in the charge that the bank book, with the entry made of the date of the payment of the check, if free from all suspicion, would be very strong evidence tending to show that the check was actually paid on the 8th of October, 1894.

388 It is submitted that this important documentary evidence should have been called to the attention of the jury, with proper instructions in regard thereto.

XI.

Throughout the charge his honor refers to the serious conflict of evidence, and in one part of the charge refers to the conflict in the most vital part of the contention as hopeless. Such a state of the evidence, it is submitted, should have worked the acquittal of the defendant, assuming the view taken by his honor in his charge to the jury to be correct, and the jury erred, therefore, in not acquitting.

XII.

The verdict of the jury is against the weight of the evidence:

1. The evidence preponderates in favor of the accused.

2. If this be not so it is not sufficient to overcome the presumption of innocence and establish the guilt of the defendant beyond a reasonable doubt.

GANTT — GREER,
Atto's for Defendant.

The motion for a new trial was argued and considered by his honor the trial judge, who overruled the same. To the action

389 of the court in overruling his motion for a new trial the defendant excepted and tendered this his bill of exceptions, which is signed, sealed, and made a part of the record, the same having been prepared in the presence of counsel for the Government and of counsel for the defendant.

January 6, 1896.

C. D. CLARK, *Judge.*

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390 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 6th day of January, A. D. 1896, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

This day came again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorneys, and asks leave of the court to file herein the defendant's petition for a writ of error to the Supreme Court of the United States, at Washington, in the District of Columbia, to review the judgment entered herein against him, which leave is hereby granted, and said petition accordingly is now filed and such writ of error is hereby granted and allowed, the said defendant having filed
391 with said petition his assignment of errors, as required by law; and for satisfactory reasons to the court appearing, upon motion of said defendant and for good cause shown, the time for docketing this case in said Supreme Court and filing the record thereof with the clerk of said court is hereby enlarged and extended to the first Monday in March next.

392 *Petition for Writ of Error.*

Filed January 6, 1896.

Circuit Court of the United States, Western District of Tennessee.

THE UNITED STATES
vs.
LOWRY W. HUMES. } No. 1982.

To the hon. the judges of said circuit court of the United States, sitting at Memphis:

Your petitioner, Lowry W. Humes, respectfully shows to the court that on this sixth day of January, 1896, in said case, by the judgment and consideration of said court, he was sentenced to two years, hard labor in the Ohio penitentiary, at Columbus, Ohio, and fined the sum of five hundred dollars, and adjudged to pay the costs of said case, and your petitioner now prays for a writ of error to the Supreme Court of the United States, now sitting at Washington, in the District of Columbia, to review the judgment aforesaid so entered against him; and your petitioner will ever pray.

GEORGE GANTT,
JAMES M. GREER,
Attorneys for Petitioner.

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393 *Assignment of Errors.*

Filed January 6th, 1896.

Circuit Court of the United States, Western District of Tennessee.

UNITED STATES
vs.
L. W. HUMES. } No. 1982.

The defendant assigns the following as error in the court's action on the trial of the above cause and in overruling the motion for new trial:

I.

Error in failing to instruct that if the jury believed from the evidence the check was not paid to William Anderson on the 8th of October, but to some other negro, that this would not justify a conviction of the defendant unless the evidence satisfied the jury beyond a reasonable doubt that the money, either directly or indirectly, through the hands of such other negro, reached the defendant, who wrongfully withheld $486.40 thereof, paying to William Anderson, on the 29th of October, 1894, or at some other day after the 8th of October, 1894, only $50.00, and wrongfully withholding the entire balance. The defendant was entitled to such instruction,
394 applying the law to this particular and important aspect of the case, and especially so in view of the ground assigned as error under the III head.

II.

It is respectfully submitted that the court erred in giving the following language in charge to the jury: "And in respect to that it appears from the statute, as you have observed, that it is necessary, in order to make the case against the defendant, (first) that he must have been the agent or attorney of the pensioner, or he must have been instrumental in the prosecution of the pension claim before he falls within the category of the persons who are subject to the provisions of the statute, and (secondly) he must withhold from the pensioner all or a part of what is due the pensioner claimant. So that two propositions are necessary to be established: that def't was an agent or instrumental in the prosecution of the claim, and, secondly, that he withheld from the pensioner money that belonged to the pensioner—some part of the pension that was allowed.
Now, desiring to get the jury down to the real issue in this
395 case as it comes to you, leaving the jury free to find for itself, the court is of opinion that, considered in reference to either the Government's proof or the defendant's, and with reference to the written evidence or the oral, that the defendant was instrumental in the prosecution of these claims in such sense as that if he withheld the money he would be within the provision of the

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statute and guilty. That brings you to the fact, then, of whether or not he did withhold these pension claims." This was error, because it took from the jury all consideration of the evidence tending to show that the defendant was neither the attorney, agent, or person instrumental in procuring or prosecuting the pension claim of either Anderson or Bloodson. This being a question of fact, as to whether the defendant was or was not such agent, attorney, or person procuring said pension money, it was the province of the jury and their duty to determine such fact for themselves
396 from the evidence, and the court could not instruct them upon this as a matter of law.

III.

It is further assigned as error that the court refused to give the special instruction asked by the defendant in the following words and figures: Unless you find from the evidence that the defendant was the att'y, agent, or other person engaged in prosecuting the pension claims of Anderson, Haynes, and Bloodson, then the court instructs you to find for the defendant.

We respectfully submit that this was error, because in such special instruction the jury are required to find what was the fact as to defendant's connection with the procuring or prosecution of Anderson's or Bloodson's claim for pension money.

IV.

397 The following portion of the charge contains error: "The Government's contention is that in fact Humes took that check there on the 8th of October himself and procured it to be cashed, and that the younger Humes has no recollection of it at all, except such as he has, in the interest of his brother, actually led himself to believe since, and that on the 29th of October that he kept that money till that time and then paid Anderson $50.00, Anderson says, and in respect to which he is corroborated by Finley and Laughlin and by the elder Finley, so far as the date his cow was paid for is concerned."

The tendency of this instruction, it is submitted, was to produce the impression on the minds of the jury that there was some evidence in the case showing that the defendant took the check in person to the bank on the 8th day of October, 1894, and on that day received from the cashier the amount of the check. In support of this view there is not a particle of evidence. Mr. Humes
398 did not go in person to the bank. The check was paid to Anderson or some other negro. This, under the proof, is beyond doubt.

V.

It is respectfully submitted that the defendant's case may have been prejudiced by the following instruction: "Among other things, you may consider for what it is worth the fact, as the case comes to you, that Mr. Humes, so far as it is developed, was doing or attempt-

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ing to do this work for nothing but the notary's fee, as a question affecting his testimony." It is true that after the jury had been considering of their verdict for some time his honor withdrew this instruction, and his purpose was to do so in such way as would leave no effect whatever upon the minds of the jury. This is always difficult, but almost impossible in this case, where the charge is in substance the fraudulent withholding of the money of the pensioner, and the circumstances referred to tends to disparage the business and stain the reputation of the defendant. The tendency was to lower and depreciate. Withdrawing, no matter how
399 fully done, it is submitted, could not remove the effect already produced.

VI.

The tendency of the following instruction, it is submitted, was to prejudice the cause of the defendant: "Now, I have undertaken, somewhat tediously, to direct your attention to this conflict over the Anderson transaction, because most of the proof in the case is in regard to that, and the most extensive conflict is in regard to that, and the testimony on behalf of the Government, particularly in the corroboration of Finley and Laughlin, makes the case against Humes in regard to that transaction stronger than it is in regard to the other." In this particular part of the instruction which was calculated to give undue prominence to the testimony of Finley and Laughlin, viz: "And the testimony on behalf of the Government, particularly in the corroboration by Finley and Laughlin, makes the case against Humes in regard to that transaction stronger
400 than it is in regard to the other."

VII.

It is respectfully submitted that his honor may have misled and probably did mislead the jury in the emphasis which he laid upon the testimony of Finley and Laughlin and in what he said in regard thereto, and which was repeated three several times. This, taken in connection with what was said in regard to the same testimony at the close of his honor's review of the testimony, tended to give the testimony of Finley and Laughlin undue prominence.

VIII.

In calling attention to the circumstances that might lessen the credit to be given to the witnesses of the defendant, it is submitted that a similar instruction should have been given in regard to the testimony of Laughlin and Finley, but, instead of doing so, his honor instructed in regard to them as follows: "Now, you have got that conflict to deal with. What interest did Finley and Laughlin have to testify anything but what they understood to be the
401 truth, and did they correctly understand it?" It is submitted that, inasmuch as relationship and employment are mentioned as circumstances tending to weaken the testimony of defendant's witnesses, the jury should have been instructed that if

Laughlin was the counsel of Anderson, and Finley his landlord and self-constituted protector, undertaking to look after his interests, that this would be a circumstance which might be looked to in weighing their evidence, and especially as, immediately after what his honor says in respect to Finley and Laughlin, the jury are told that they may look to the fact that Sanderlin was in the employ, to an extent, at least, of Humes.

402 IX.

The tendency of the following, which was repeated in the instruction in regard to Bloodson, whether so intended or not, probably injured the defendant's case in the estimation of the jury, viz: "Another circumstance is if Humes started out to swindle Anderson out of his pension you may consider the fact that, according to what Anderson says, out of $536.40 Humes took all of it except $50.00. It is not a case where he undertook to take some of it—a small part—but he took all of it except $50.00."

X.

The following portion of the charge contains error, viz: "Now, of course, it is a minor matter, but in considering this testimony you can take into account also the intelligence of the witnesses and their reliability as a medium for correctly understanding and correctly communicating facts so known to such witness." The error consists in stating that the intelligence of the witnesses and their reliability is a minor matter.

403 XI.

It is nowhere mentioned in the charge that the bank book, with the entry made of the date of the payment of the check, if free from all suspicion, would be very strong evidence tending to show that the check was actually paid on the 8th of October, 1894. It is submitted that this important documentary evidence should have been called to the attention of the jury, with proper instructions in regard thereto.

XII.

Throughout his charge his honor refers to the serious conflict of evidence, and in one part of the charge refers to the conflict in the most vital part of the contention as hopeless. Such a state of the evidence, it is submitted, should have worked the acquittal of the defendant, assuming the view taken by his honor in his charge to the jury to be correct, and the jury erred, therefore, in not acquitting.

XIII.

The verdict of the jury is against the weight of the evidence:
1. The evidence preponderates in favor of the accused.

404 2. If this be not so, it is not sufficient to overcome the presumption of innocence and establish the guilt of the defendant beyond a reasonable doubt.

GANTT — GREER,
Atto's for Defendant.

405 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the western district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said circuit court, before you, between The United States of America, plaintiff, and Lowry W. Humes, defendant, a manifest error hath happened, to the great damage of the said Lowrey W. Humes, as by — complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the fifth day of February, 1896, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. M. W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Memphis, this sixth day of January, A. D. 1896, and 120th year of American Independence.

(Seal Circuit Court of the United States)
(for the Western District of Tennessee.)

JOHN B. CLOUGH, *Clerk.*
—— ——, *D. C.*

[Endorsed:] No. 1982. Circuit court of the United States, western district of Tennessee. The United States *vs.* Lowry W. Humes. Writ of error. Issued the 6th day of January, A. D. 1896. John B. Clough, clerk.

Acknowledgement of Service.

At Memphis, Tennessee, on this January 6th, 1896, I hereby accept due service of the within writ for the United States.

CHAS. B. SIMONTON,
United States Attorney.

406 UNITED STATES OF AMERICA:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the fifth day in February, 1896, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the circuit and western division of the western district of Tennessee, wherein Lowry W. Humes is plaintiff and you are defendant in error, to show cause, if there be any, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable C. D. Clark, judge of the district courts of the United States for the eastern & middle districts of Tennessee, sitting by designation in the circuit court of the United States for the western division of the western district of Tennessee, this January 6th, A. D. 1896.

C. D. CLARK, *Judge.*

[Endorsed:] No. 1982. Circuit court of the United States, western district of Tennessee. The United States *vs.* Lowrey W. Humes. Citation. Filed the 6th day of January, A. D. 1896. John B. Clough, clerk.

Acknowledgment of Service.

MEMPHIS, TENNESSEE, *January* 6, 1896.

As district attorney of the United States for the western district of Tennessee I do hereby acknowledge due service of the within citation.

CHAS. B. SIMONTON,
United States Attorney.

407 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1895, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 6th day of January, A. D. 1896, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
LOWRY W. HUMES, Defendant. } No. 1982.

Come again the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorneys, and the said writ of error having been duly issued

and service thereof acknowledged by the district attorney, and the citation in such behalf having been duly issued as required by law, and service thereof acknowledged by the district attorney, the said defendant, by his attorneys, moves the court to grant a supersedeas and stay of execution pending the writ of error herein; which
408 motion, for satisfactory reasons to the court appearing, is hereby granted and such supersedeas and stay of execution is hereby allowed; and thereupon the said defendant, by his attorneys, now further moves the court to admit the said defendant to bail pending the said writ of error in such amount as may be fixed by the court in such behalf; which motion, for satisfactory reasons to the court appearing, is hereby granted, and the said defendant will be admitted to bail in the penal sum of four thousand dollars with approved sureties, his bond in such behalf being now tendered and duly approved and filed, as required by law and the practice of the court.

409 *Bond.*

Filed January 6, 1896.

Circuit Court of the United States, Western District of Tennessee.

THE UNITED STATES
vs.
LOWRY W. HUMES. } No. 1982.

Know all men by these presents that we, Lowry W. Humes, as principal, and L. B. McFarland and Milton Humes, as sureties, are held and bound unto the United States in the full sum of four thousand dollars; for the payment whereof, well and truly to be made to the United States, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Signed with our names and sealed with our seals this sixth day of January, 1896.

Whereas lately, at the November term, 1895, of the circuit court of the United States for the western division of the western district of Tennessee, in a suit depending by indictment in said court between The United States, plaintiff, and said Lowry W. Humes, defendant, the said Lowry W. Humes, defendant, was convicted and sentenced and adjudged to the Ohio penitentiary, at Columbus, Ohio, for the term of two years and to pay a fine of $500.00 and costs of suit; and whereas he has sued out from the said
410 judgment and proceedings a writ of error to the Supreme Court of the United States and caused a citation to be issued and served; and whereas the said Humes, defendant, is by order of said circuit court allowed to give bail in the sum of four thousand dollars: Therefore if the said Humes, defendant, shall prosecute his writ of error with due diligence and perfect the same and secure a reversal of said conviction and judgment, or if, failing in this behalf, he shall render himself in execution and perform said judg-

ment of conviction and sentence, this bond shall be void; otherwise shall remain in full force and effect.

LOWRY W. HUMES,
L. B. McFARLAND,
MILTON HUMES,
By JOHN H. SHEFFEY,
Attorney-in fact, with Power Annexed.

The within and foregoing bond taken and approved this 6th day of January, 1896.

C. D. CLARK,
U. S. District Judge.

411 *Power of Attorney.*

Filed January 6th, 1896.

Circuit Court of the United States, Western District of Tennessee.

THE UNITED STATES
vs.
LOWRY W. HUMES. } No. 1982.

STATE OF ALABAMA, }
Madison County. }

Know all men by these presents that I, Milton Humes, of the city of Huntsville, in said county and State, do hereby constitute and appoint John H. Sheffey my true and lawful attorney-in-fact, for me and in my name and stead to sign my name and execute any and all bonds for appeal or otherwise that may be necessary to be given in the case of The United States *vs.* Lowry W. Humes, pending in the circuit or district court of the United States in and for the western district of Tennessee, and I do hereby ratify and confirm such signature and execution of said bond or bonds as fully and completely as if the same were done by me in my own proper person.

In witness whereof I have this day hereunto set my hand and affixed my seal January 6th, 1896.

MILTON HUMES. [SEAL.]

412 Before me, Edward E. Greenleaf, deputy clerk in and for the circuit court of the United States for the northern division of the northern district of Alabama, this day personally appeared Milton Humes, who, being by me first duly sworn, says that he signed the foregoing power of attorney volantarily on the day the same bears date, and that he is worth the sum of ten thousand dollars over and above his exemptions and liabilities, and that he owns real estate in Shelby county, Tennessee, worth twenty-five thousand dollars, upon which there is an incumbrance of fifteen hundred dollars.

MILTON HUMES.

Sworn to before me this 6th day of Jan'y, 1896.

ED. GREENLEAF,
Commissioner. [L. S.]

413 THE UNITED STATES OF AMERICA,
Sixth Judicial Circuit, Western District of Tennessee.

I, John B. Clough, clerk of the circuit court of the United States for the western division of said western district of Tennessee, do hereby certify that the papers hereto attached are full, true, perfect, and correct copies of the originals and a transcript of the entire record and proceedings (with writ of error & citation) in said court as the same now appears of record and upon the files in my office in the following cause, to wit:

THE UNITED STATES
vs.
LOWERY W. HUMES. } No. 1982.

In testimony whereof I have hereunto written my name and affixed the seal of said court, at my office, in the city of Memphis, Tennessee, this 24th day of February, A. D. 1896, and of the Independence of the United States the 120th year.

{ Seal Circuit Court of the United States for the Western District of Tennessee. }

JOHN B. CLOUGH, *Clerk.*

Authentication.

I, E. S. Hammond, a judge of said court, do hereby certify that John B. Clough, whose genuine signature appears to the foregoing certificate, is and was at the date of the same clerk of said court, and that his attestation is in due form.

E. S. HAMMOND,
Judge of the District Courts of the United States for the District Aforesaid.

[Endorsed:] No. 1982. Circuit court of the United States, western district of Tennessee. The United States *vs.* Lowry W. Humes.

Endorsed on cover: Case No. 16,242. W. Tennessee C. C. U. S. Term No., 480. Lowry W. Humes, plaintiff in error, *vs.* The United States. Filed March 30, 1896.

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JAN 21 1898
JAMES H. McKENNEY,
CLERK

Brief of Greer for U. S.

Filed Jan. 21, 1898.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 150.

LOWRY W. HUMES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

On Writ of Error to the Circuit Court of United States for Western Division of Western District of Tennessee.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

J. M. GREER, SOLICITOR.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1896.

No. 480.

HUMES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

BRIEF AND ARGUMENT FOR PLINTIFF IN ERROR.

STATEMENT OF CASE.

In the Circuit Court of the United States for the Western Division of the Western District of Tennessee, May term, 1895, the indictment herein was returned charging the defendant with wrongfully withholding specified sums of pension money from five persons therein named. The indictment was found on section [illegible], R. S. It contained nine counts. On the first trial defendant was found not guilty on six counts. He was not found guilty on any. On the second trial he was found not guilty on one count, and reported, as we respectfully submit, a forced conviction against the facts and the law on two counts, because of the erroneous charge of the court.

After an ineffectual effort for a new trial the defend-

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ant was fined $500 and ordered imprisoned, and the case appealed in error to this court. (R., p. 14).

The indictment was not placed, as it should have been, on the final paragraph of section 4786, as amended July 4, 1884, and as was done in the Ballew case. 160 U. S., 189. Congress had some purpose in re-enacting this provision. Doubtless 5485 was repealed by the re-enactment of 4786.

(Placing the words in italics in the brief is usually counsel's.)

The law construing these statutes is stated in almost the same words in two cases.

In Ballew case, this court, by Mr. Justice White, construing 4786, say: *There is a particular class of persons to whom the statute is applicable. It is any agent, attorney, or any other person instrumental in prosecuting any claim for pension.*

In Benecke case, 98 U. S. 447, this court, by Mr. Justice Miller, construing this very section 5485 here involved, say: *The persons described who may be guilty are those prosecuting claims for pension before the Pension Office.*

As further illustrating the view that the words of these statutes have a definite signification, this court in the last case cited also say:

"*And it is but a just limitation of the word claimant that he should be a claimant under that act, a claimant before the pension bureau.*"

The indictment here as before said contains nine counts. Two sets of counts, to-wit: Being then and there agent and attorney for and person instrumental in prosecuting claims (before the Pension Office); first, did *wrongfully withhold* pensions, to-wit: $486.40 from Anderson and $517.20 from Bloodson; or any part thereof. First and third counts, first set, those involved here. Second, did *unlawfully retain* (withhold) etc. for his services and instrumentality greater compensation, etc. R., p. 1, 2, second set of counts.

As it did in the Ballew case, the indictment charged the offense in the double aspect. These statutes are all much alike. The differences are those shown beyond.

When put upon trial the defendant moved to quash the indictment. This motion was overruled. R., p. 8, 9. And that action of the trial court is one of the assignments of error here. The defendant was then placed on trial on all nine counts. After several days' trial the district attorney declined to prosecute on counts five and six, and the defendant was discharged as to them. R., p. 11.

On this trial the jury found the defendant not guilty, specifying counts two, four, eight and nine.

That he was not agent or attorney for or any other person instrumental in prosecuting claims (before the Pension Office) and did not *unlawfully* demand, receive or retain (withhold) from Anderson $486.40, or $517.20 from Bloodson, or $116.00 from Haynes, or any part thereof, for his services and instrumentality—greater compensation, etc. R., p. 11, 12.

That he was not agent for or any other person instrumental in prosecuting the claim for Prior (before the Pension Office) and did not wrongfully withhold from him $15.80, or any part thereof.

On the second set of counts there was none as to Prior, who had been granted and was drawing his pension for years before he knew the defendant at all or he him. That the defendant should be charged with wrongfully withholding from Prior was as far as the pleader seemed to think an obsolete statute could be made to stretch in an indictment, even with the charge to the jury by the trial court that the defendant, as a fact, was instrumental in the prosecution of these claims for pension in such sense that he was within the statute and guilty if he wrongfully withheld pensions *allowed*, not *due*, as this court held on a like statute in the Ballew case.

The jury reported they could not agree on counts one, three and seven, and a mistrial was entered as to them.

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And the defendant at once, for the second time, put on trial on said last named three counts.

On this trial the jury found the defendant not guilty on count seven. R., p. 14. That he was not agent for or any other person instrumental in prosecuting the claim for pension of Haynes (before the Pension Office), and did not wrongfully withhold from him $116.00 or any part thereof. There were three questions on this indictment for the jury to find as facts. First. Did the defendant belong to the class so as to be within the statute? Second. If he did belong to the class, did he keep back money as a fact? Third. If he belonged to the class as a fact, and as a fact kept back money, then the question of fact for the jury to find was, under which clause of the statute? Under the first or second? Greater compensation, etc., first, or simply kept back, second?

The jury had the same first and second questions of fact to find as to the first and second clauses of the statute.

First. Question as to both clauses of the statute, did he belong to the class?

The jury found the defendant not guilty on the first trial. That he was not the agent, or attorney or any other person instrumental in prosecuting these very claims for pension (before the Pension Office) for these very same parties.

Then if he didn't belong to the class as a fact, he would not be guilty in fact or law, even if he admitted he kept back the money. And therefore he is not guilty under both clauses of the statute, for the very plain reason that he does not belong to the class of persons denominated by the statute, and he is therefore not within the meaning or terms of the statute, as this court have twice held in the cases first cited.

Second. Question of fact for the jury to find under both clauses of the statute, did he keep back the money, or any of it?

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The jury found the defendant not guilty on the first trial—that he didn't keep back any money.

If, in fact, he didn't belong to the class, and, in fact, didn't keep back the money, that ended the case, because then it is immaterial for the jury or the court whether it was in regard to first clause—greater compensation, or second—simply keeping back the money.

If he belonged to the class as a fact, and in fact kept back money, as found by the jury, then this court held in Ballew's case the law is he can't be guilty, and within the second clause, unless he kept back the money that was due before it was paid over to the pensioner and passed into her possession and control, and was by her deposited in bank, where the simple relation of debtor and creditor existed.

That he couldn't be guilty under the second clause because the pension money was not due, but had been paid over to the pensioner, although the jury found that Ballew belonged to the class as a fact, and, in fact, kept back the money—over $1,800.00.

But if he belonged to the class as a fact, and, in fact, kept back the money, as found as facts by the jury, then this court state the law to be under first clause—greater compensation—taken at any other time or manner, as that act provides, and taken out of the pension money, then he would be guilty. Or Frisbie's case, supra (Mr. Justice Brewer), first clause, act June 27, 1890, although he should take it out of any other money, whether the pension was granted or not.

The questions of fact for the jury to find on the first and third counts of the indictment were: Was defendant agent or attorney or any other person instrumental in prosecuting the claims of Anderson and Bloodson (before the Pension Office), and did he wrongfully withhold $486.40 from Anderson or $517.20 from Bloodson, or any part thereof.

The trial court said the defendant was not agent

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or attorney instrumental in prosecuting the claims for pensions of Anderson and Bloodson (before the Pension Office) (R., p. 15.)

If not, surely it was the duty of the court to have so charged the jury, and it was manifest error not to have so charged them.

Thus, with the trial court there was but one of these three questions of fact to determine : Was the defendant any other person instrumental in prosecuting the claims for pension of Anderson and Bloodson (before the Pension Office)?

And this question, it seems, was of easy solution to the trial court, for he found that fact for the jury, and so charged them. He usurped the province of the jury.

As fully set out in the assignments and brief beyond, and it is not re-stated to avoid repetition.

The trial court said (R., p. 15) *it was not so much as contended even in argument by the Government that the defendant was either the agent or the attorney of Anderson and Bloodson, or any of the parties* in prosecuting their claims for pension before the Pension Office. For all—most of it the Government's record—proof showed he was not, but that Powers and Chiles were.

If he was not the agent or the attorney, then the question of fact for the jury, and not for the trial court, was : Was he or any other person instrumental in the sense an agent or attorney is instrumental in prosecuting these claims for pension before the Pension Office?

If he only acted in connection with them as a United States Commissioner simply, in his purely official capacity in administering their oaths to the vouchers, and so certifying under his seal of office, how could this be said to be being any other person instrumental in prosecuting claims for pension before the Pension Office and within the statute?

It was as clearly as acts and words could make it not instrumental in the sense of prosecuting claims for pen-

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sion as an agent and attorney is instrumental in prosecuting them before the Pension Office.

It might be said to be an instrumentality in any other sense of the word, but how could it be said to be instrumental in the sense an agent and attorney is instrumental in prosecuting claims for pension before the Pension Office? How can you be instrumental in the sense an agent and attorney is instrumental in prosecuting claims for pension before the Pension Office that had been granted years before by the Pension Office, on the efforts of Chiles and Powers, agents, attorneys and other persons instrumental in prosecuting these very claims for pensions before the Pension office, issued by the Pension Bureau with Powers and Chiles, marked, enrolled, recognized and paid the $10 fees allowed by the act June 27, 1890, on the Pension Commissioner's orders, by the United States agent making payment of the pensions allowed and due, as the agents, attorneys and other persons instrumental in prosecuting these very claims for pension of Anderson and Bloodson before the Pension Office, and who, in fact, procured the granting of those very pensions by the Pension Bureau.

But whatever the fact was, whose province alone was it? It was that of the jury alone, and the trial court usurped and invaded that province of the jury. And, as noted before in the Benecke case, this court say they must be prosecuting claims before the Pension Office. Was the defendant prosecuting claims before the Pension Office? He never was. No one ever claimed he was.

So he was not within the statute and not guilty in law as well as fact. The trial court never even in its most extreme view ever claimed defendant was prosecuting claims for pension before the Pension Office. But only that he was instrumental, the trial court said.

That idea of instrumental was the extremity of comprehension, and without any limitation or qualification whatever. It was that it embraced all classes. That whatever was done, every act was a violation of law.

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The man who sets the type to print the opinions of this court you would properly class as the Chief Justice or Associate, was the view the trial court took of the meaning of the words.

On the first trial the jury found on counts two and four, on the charge by the then trial court, the defendant not guilty—that he was not agent, attorney or any other person instrumental in prosecuting the claims for pensions of Anderson and Bloodson before the Pension Office, and was not instrumental as such, and did not demand, receive or retain (withhold) from them for his services and instrumentality in prosecuting their claims for pension before the Pension Office anything, greater compensation, etc., to wit: not $486.40 of Anderson, or $517.20 from Bloodson; or any part thereof.

Bloodson's pension had been granted December 11, 1891—years before he knew the defendant, or he him, or had seen or heard of him.

So that defendant could hardly be said to have been instrumental in prosecuting and procuring a pension before the Pension Office—granted three years before Bloodson knew him at all. Anderson's was much the same. The record shows that Anderson and Bloodson and all these witnesses were pensioned by the invalid pension act June 27, 1890.

The indictment here charged that the defendant had violated 5,485, an amendment March 3, 1873, of the penal section of the general pension law, originally passed July 14, 1862 (4,692 and seq.).

And the defendant has suffered a conviction on proof showing, if any act was violated, which is denied, it was the penal statute, section 4, of the invalid pension act, June 27, 1890.

In Ballew's case he was found guilty by the jury on both counts; first, wrongful withholding, and second, retaining (withholding) greater compensation, etc., at any other time or in any other manner, as provided by that

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act—final paragraph of section 4,786, as amended July 4, 1884.

This court reversed Ballew's case on the first count and affirmed it on the second. There the illegal fee was a check on a bank to H. Ballew's order, one other than that defendant; and the check was endorsed and collected of the bank by H. Ballew. There was no question in that case but that that defendant was the sworn and duly and regularly enrolled attorney and agent of that pensioner in the pension bureau, and was so recognized by the department and had been on the Pension Commissioner's order paid by the United States agent, making the payment of the pension allowed, and due the legal fee, $25, under that act. He was a pension agent, attorney and other person prosecuting that claim for pension before the pension office. This was his sole business in the place of his residence. As the attorney, agent, etc., he was the person instrumental in prosecuting that claim for pension before the Pension Office and who obtained that pension—had it granted through his services and instrumentality to that party.

In the case at bar the defendant was found not guilty on the first trial by the jury on all the counts charging retaining (withholding) greater compensation, etc. The count on which this court affirmed the conviction in Ballew's case. The jury found in the case at bar that the defendant was not the agent or attorney or any other person instrumental in prosecuting the claims for pension before the Pension Office of any of the parties named in the indictment. But the defendant under the peculiar charge of the trial court in which it invaded the province of the jury and found for them the primary fact —condition precedent—that the defendant was instrumental in prosecuting these claims for pension before the Pension Office for said parties, and so was within the statute, and so charged the jury, and in effect charged them that the defendant was guilty, and the jury on such

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a charge could but report the defendant guilty on the first and third counts, on which this court held Ballew could not be found guilty.

In many respects Ballew's is like the case at bar.

Here the trial court erred in not explaining to the jury that the presumption of innocence was the witness of the law—that stood for the accused until overturned by proof to the contrary carrying home a degree of conviction short only of absolute certainty, and beyond a reasonable doubt.

The trial court usurped and invaded the province of the jury. Gave and refused to give about the charge given and refused in Ballew's case.

Gave undue prominence to the Government's proof.

Made no comment on the record evidence of the defendant that the bank books showed these two pension checks were paid to Anderson and Bloodson and the dates they were paid, as did the vouchers and checks.

The bank teller swore he knew Anderson and Bloodson both and knew he paid them their money on those two checks. Sanderlin swore the same, another witness. This Anderson and Bloodson denied alone and unsupported.

Anderson got his check, and on it his money from bank October 8, 1894, Monday.

The bank books showed this check was paid Anderson that day. The bank teller swore he paid Anderson the money on that check that day. That he knew Anderson, and knew this and remembered it.

Franklin swore he saw Anderson that day leave defendant's office with his check in his hand for the bank with Sanderlin to get his money. Sanderlin swore he showed Anderson the Mechanics' Savings Bank and saw him paid the money on his check that day by the teller.

Defendant swore that Anderson got his pension check that day and left the office for the bank with Sanderlin

to get the money and he never saw Anderson again that day, nor any more until November following.

Anderson denied all this.

Finley swore he came to Memphis with Anderson October 29, 1894, Tuesday. That Anderson left him at the wagon yard a mile and a half across the city. Said he was going to the defendant's office. That at 2 or 3 o'clock he met Anderson again at the wagon yard. That where Anderson had been during the time he did not know, or what he had been doing. That Anderson gave him a roll of money. That he counted it. That it was $50. That he went to see Laughlin, attorney. That they went to defendant's office. That they found defendant pressed with much business with many other persons. That they called him from the front room to the back. That there, while standing, they had a moment or so of hurried talk with defendant. That he told them Anderson had gotten his pension. That he said it was $60. That his money came in the morning's mail. That he kept $10, his attorney's fee. That Laughlin began the conversation and did most of the talking.

Laughlin did not corroborate Finley. Laughlin swore he did not know what day, week or month it was. That defendant said there was a $10 attorney's fee, but he did not say it was his or that he took it.

Bloodson swore about the same on his claim. As the record shows, he said he got $5 in two places and $50 in another in money from defendant December 27, 1894.

A. Snyder swore Bloodson worked all Christmas eve at her house plowing a lot 55x103 feet and planting out a few little trees. F. Snyder swore she was not at home that day and did not know.

Copeley (c.), who Bloodson swore was named Copeland, swore Bloodson knew, for he had told him he would get $500 or $600 when he first drew his pension.

Bloodson swore, as did Anderson, that while they both knew they should get $500 or $600 each when they

first drew, yet they took from defendant $5 and $50 and made not a word of complaint to him about it. And Anderson continued to have defendant make out his voucher each draw day afterwards until after this trial in November, 1895. Defendant swore Bloodson got his check for $567.20 December 24, 1894, and left the office with the check in his hand, with Sanderlin, for the bank and defendant did not see him again that day or for days. The bank books showed this. The teller swore it, Franklin, L. C. Humes and Sanderlin also.

The trial court erred in refusing to grant defendant a new trial on the newly discovered evidence.

The trial court said much in the ten page printed charge on Anderson's claim and its view of it. And much the same in Bloodson's; thus forcing conviction on these two.

In Haynes' claim the proof was about the same, but the trial court in the charge said only a few words, laid no particular stress on its view, so the jury construed it on that charge; the trial court did not insist on a conviction, and so they found not guilty.

We ask to make this further additional statement. The record was filed here March 30, 1896. The clerk of the court below had to get an extension of time for him to copy it in, and thus in its being hurried away so as to be within even the extended time given the clerk, counsel did not get an opportunity to examine it before it was filed here. In April, 1896, the case was advanced on motion of the Attorney General and set for trial October 19, 1896. Owing to circumstances which counsel and client could not avert, the case was called October 22, 1896, and dismissed because the record was not printed. This dismissal was afterwards set aside and the case reinstated on the docket, and on another motion to advance it was reset for trial October 18, 1897, and the record printed. On receipt of a copy of the printed record the senior counsel in the case was dangerously ill, and was so for about a

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year, when it resulted in his lamented death. We have stated these facts, as we believe they show there has been no fault on our part in this case. The mishaps that have resulted have been our misfortune, as it seems to us.

On examination we note the record shows a failure to copy into it eight matters of evidence that the record itself calls for but were not copied by the clerk or court stenographer who took down the proceedings of the trial.

First. The testimony of L. C. Humes, son of defendant (R., p. 180), is not copied in the record at all. And but for the trial court's charge it would not show that any such witness had testified in the case at all. Fortunately the charge shows what this witness' evidence was.

Second. (R., p. 172) the calendar of 1894 to give the dates.

Third. (R., p. 22) the pension certificate.

Fourth. (R., p. 55) the voucher, and

Fifth. The check of Anderson.

Sixth. (R., p. 56) the certificate,

Seventh. The voucher, and

Eighth. The check of Bloodson.

These pages of the record all show that the District Attorney offered these seven matters in evidence and read them to the jury, but they are nowhere copied in the record. The record shows they are called for by the bill of exceptions on its very face, and their omission surely is not our fault. It is these omissions, we take it, that called forth from the then Solicitor General, in his letter of October 19, 1896, the expression, "the record is in grossly improper form." And we are inclined to agree with this view; while at the same time we respectfully submit it is no part of our fault.

One other matter is not shown by the record which we submit it is not improper to mention, while it may be true the record is not in proper shape to give the defendant the full benefit of it.

First. Defendant peremptorily challenged Juror

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Shepherd because he had formed and expressed an opinion touching the guilt or innocence of the defendant from having talked to one of the jurors of the former trial, who purported to state to him the facts of the case. This challenge upon this ground the trial court refused to allow, and the defendant then and there reserved an exception to that ruling and refusal.

Second. Defendant peremptorily challenged Juror Shepherd because the statute allows a party three peremptory challenges as to each offense. And defendant was on trial, using the words of this court in its opinion in McElroy v. United States, 164 United States 76, speaking by Mr. Chief Justice Fuller, *"for three separate and distinct offenses, complete in themselves, independent of each other, and not provable by the same evidence, and whose consolidation was not authorized by 1024 R. S. The offenses are in no wise parts of the same transaction, and dependent upon evidence of a different state of facts as to each of them. They were not for the same act or transgression, nor for two or more acts or transactions connected together, which might be properly joined, because they were substantive offenses, separate and distinct, complete in themselves and independent of each other, committed at different times and not provable by the same evidence. In cases of felony the multiplication of distinct charges has been considered so objectionable as tending to confound the accused in his defense, or to prejudice him as to challenges, in the matter of being held out to be habitually criminal in the distraction of the attention of the jury, or otherwise, that it is the settled rule in England and in many of our states to confine the indictment to one distinct offense or restrict the evidence to one transaction.*

Necessarily where the accused is deprived of a substantial right (in our case proper number of challenges at least) by the action of the trial court, such action having been properly objected to, is reversible error.

And even if the defendants are the same in all the indictments consolidated, we do not think the statute authorizes

joinder of distinct felonies, not provable by the same evidence and in no sense resulting from the same series of acts.

It is only when they may be properly joined that a joinder is permitted. While the general rule is that counts for several felonies of the same nature, requiring the same mode of trial and punishment, may be joined in the same indictment, subject to the power of the court to quash the indictment or to compel an election, such joinder cannot be sustained where the offenses in no wise parts of the same transaction, and must rest upon evidence of a different state of facts as to each of them.

It cannot be said in such case that the attention of the jury may not have been distracted to their injury in passing upon distinct and independent transactions. The order of consolidation was not authorized by statute and did not rest in mere discretion. This is the opinion of this court in McElroy v. United States, 164 United States 76, *which was reversed and remanded for a new trial on that ground.*

Defendant's contention in the case at bar is that as the last time he was tried for three separate offenses he was therefore entitled to nine peremptory challenges. He had used three. Juror Shepherd was the fourth challenge and last man of the twelve chosen.

The trial court refused to grant defendant this challenge on this ground, and defendant then and there duly reserved an exception to the same.

It is too late for the trial of this case to suggest a diminution of the record, and indeed defendant does not want to delay the trial further, but states these omissions because he does not think them faults with which he is chargeable at all, in any way.

BRIEF AND ARGUMENT.

Counsel have grouped the assignments so that like questions may be presented together. 11 Assignment or Error. R., p. 175-6, 196-7.

The trial court erred in giving the following charge to the jury: "It appears from the statute, as you have observed, that it is necessary in order to make the case against the defendant:

"First. That he must have been the agent or attorney of the pensioner, or he must have been instrumental in the prosecution of the pension claim, before he fails within the category of the persons who are subject to the provisions of the statute; and

"Second. He must withhold from the pensioner all or a part of what was due the pensioner claimant."

So that two propositions are necessary to be established:

That defendant was an agent or instrumental in the prosecution of the claim, and secondly, that he withheld from the pensioner money that belonged to the pensioner, some part of the pension that was *allowed*. (*Not* due, as held in Ballew case).

"*Now, desiring to get the jury down to the real issue in this case as it comes to you*, leaving the jury free to find for itself, the court is of opinion that, considered in reference to either the Government's proof or the defendant's, and with reference to the written evidence or the oral,

"*That the defendant was instrumental in the prosecution of these claims in such sense as that if he withheld the money he would be within the provision of the statute and guilty.*

"*That brings you to the fact, then, of whether or not he did withhold these pension claims.*"

This was error, because it took from the jury all consideration of the evidence tending to show that the defendant was neither the attorney, agent, or person instrumental in procuring or prosecuting the pension claim of either Anderson or Bloodson. This being a question of fact, as to whether the defendant was or was not such agent, attorney, or person procuring said pension money, it was the province of the jury and their duty to deter-

mine such fact for themselves from the evidence, and the court could not instruct them upon this as matter of law.

Again the trial court says: "*That is the real issue,*"

"In respect to this Anderson transaction,"

"*Viz.: Who got the proceeds of that check?*"

"*If Mr. Humes got and retained the proceeds, or retained any part of it above the Notary's fee, then he is guilty; whereas if Anderson got it that is the end of the case so far as that count is concerned; or if, under the rule stated, you have a reasonable doubt about how that is, the defendant is entitled to an acquittal.*"—R., p. 176.

Again he says: "*So that did he withhold from Anderson all or any substantial part of that pension?*"—R., p. 178.

"*If so, he is guilty, and you should convict him; and if not, or if you have a reasonable doubt, acquit him.*"

Thus it is seen the trial court usurped and invaded the province of the jury in his charge in that nine separate times he withdrew from them the finding and consideration of what he himself first charged was the primary fact that they themselves must first find as a condition precedent before there could be any conviction: i. e., that the defendant "*must have been instrumental in the prosecution of the pension claim before he falls within the category of the persons who are subject to the provisions of the statute.*"

Twice the court stated to the jury fairly what they must find as a condition precedent before they could convict.

He says: "*It appears from the statute, as you have observed, that it is necessary in order to make the case against the defendant, first, that he must have been the agent or attorney of the pensioner, or he must have been instrumental in the prosecution, etc.; and second, if he was, he must withhold, etc.*"

And he reiterates it: "*So that two propositions are necessary so be established.*"

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And he repeats what they are again. He emphasizes it for the second time:

"That defendant was an agent or instrumental in the prosecution of the claim; and secondly, that if he was, he must withhold, etc."

Who found this primary fact that it was charged the jury must find as a condition precedent before there could be any conviction? The trial court; and so stated to the jury.

It may be suggested that in the first part of the charge the court used the words, *"leaving the jury free to find for itself, the court is of opinion that, etc."*

In the very next breath, where he repeats that charge, does he say again, *"leaving the jury free to find for itself, the court is of opinion, etc." No. There is no even apparent limit on his charge this time.* He says, *"That brings you to the fact, then, of whether or not he did withhold these pension claims."*

What has become of the primary fact that he told the jury they must first find as a condition precedent before there could be any conviction? What is it *"that brings you to the fact, then, of whether or not he did withhold these pension claims?"*

It was that the trial court had found the primary issue of fact—condition precedent for them which he at first had twice submitted to them, and he so charged them what it was, i. e., that defendant was instrumental in the prosecution of these claims in such sense as that if he withheld the money he would be within the provisions of the statute and guilty.

Next he says, *"and that is the real issue."*

There is no even apparent limit on these words. He does not tell them this time, "leaving the jury free to find for itself, the court is of opinion," etc.

He tells them, *"and that is the real issue."*

What has become of the primary other real issue—condition precedent, that he himself had twice charged

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them before, they themselves must first find before there could be any conviction?

He himself has found for them what that primary fact—condition precedent to any conviction, was, many times before and afterwards.

And for the fourth time, as if to clinch it, he charges them: "If Mr. Humes got and retained the proceeds, or retained any part of it above the Notary's fee,"

What then is the only sole and solitary condition upon which he puts the case to them on? *"—then he is guilty"*

This time does the trial court leave it to the jury to find whether or not the defendant belonged to that class of persons who would be within the provisions of the statute, and his guilt or innocence depend primarily on that as a condition precedent to their right to convict him? No. The trial court has long since in his charge three distinct times passed that issue of fact by finding it himself and so charging the jury, and now he tells them if Mr. Humes retained it, he is guilty.

The trial court has changed it—defendant's guilt or innocence now rest with them alone on the solitary issue of fact as to whether or not he retained it.

Does the trial court tell them this time "leaving the jury free to find for itself, the court is of opinion?" No. Leaving out of consideration all things else—he says if Mr. Humes retained it, he is guilty.

He says next: "whereas if Anderson got it, that is the end of the case, so far as that count is concerned."

"Or if under the rule stated you have a reasonable doubt about how that is, the defendant is entitled to an acquittal."

Do these two charges look much like leaving the jury free to find for itself, or that the trial court could be much of the opinion that the jury were left free to find for itself whether or not the defendant was instrumental in prosecuting these claims for pensions before the Pension Office?

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Again he says:

"So that did he withhold from Anderson all or any substantial part of that pension?"

"If so, he is guilty and you should convict him."

"If not, or you have a reasonable doubt, acquit him."

Do these three charges look much like the jury were left free to find for itself, or that the court was simply expressing an opinion as to whether the defendant was instrumental or not in prosecuting these claims for pension before the Pension Office?

Could language be plainer, showing that the court had time and time again in his charge taken away from them all consideration of such fact, and had time and time again so charged them?

In fact, there was no limit upon the charge, and if one was intended it is strange indeed that so many times the limiting words should have been omitted altogether.

If you examine the charge again you will readily see the plain meaning of it was to the jury this: I charge you that taking all the evidence in consideration, both the Government's and the defendant's, written and oral, the defendant was instrumental in prosecuting these claims for pension in such sense that if he withheld the money he would be within the provisions of the statute and guilty.

If the trial court intended to leave the jury free to find for itself and simply to express his opinion, that is reversable error under the repeated decisions of this court, cited beyond, where it is the finding of the primary fact.

But the use of the expression, leaving the jury free to find for itself, the court is of opinion, is a meaningless nothing when called a limitation on a charge where the judge told the jury that from all the evidence, the Government's and defendant's, written and oral, the defendant was instrumental in prosecuting these claims in such sense that if he withheld the money he would be within the provisions of the statute and guilty.

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His reference to it as both the Government's proof and defendant's, written and oral, but fixed it more firmly in the minds of the jury as settling the primary fact by the judge in his charge to them. After stating it in such unqualified terms, if he had said a thousand times, leaving the jury free to find for itself, the court is of the opinion, etc., how was it possible for him to have effaced from their minds the fixed fact as he had stated to them he had found it?

In Starr v. U. S., 153 U.S., 626, this court, by Mr. Chief Justice Fuller, called attention to the fact that there were limitations on the power of a Federal court in commenting on the facts of a case, when instructing the jury, *limitations inherent in and implied from the very nature of the judicial office.*

In Reynolds v. U. S., 98 ib., 168, this court, by Mr. Chief Justice Waite, also said on the same subject: "Every appeal by the court to the passions or prejudice should be promptly rebuked, and *it is the imperative duty of the reviewing court to take great care that wrong is not done in this way.* . . . ."

In Hickory v. U. S., 160 ib., 425, this court say: "Admonished by the duty resting on us in this regard, we feel obliged to say that the charge which we have been considering *crosses the line which separates the impartial exercise of the judicial function from the region of partisanship where reason is disturbed, passions excited, and prejudices necessarily called into play.*"

The court in the case at bar first stated the true rule of law to the jury: That as a condition precedent to conviction they must find as a fact that the defendant was the agent, attorney or any other person instrumental in prosecuting these claims for pension before the Pension Office.

The defendant could not be within the statute and punished for a violation of law, if he violated it, unless the jury first found that he belonged to this class. Yet

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in the face of so plain a law the judge finds this fact for them.

If he intended to leave the jury free to find for itself and only to express an opinion to which they should pay not the least bit of heed in the world, why did he tell them,

"*Now, desiring to get the jury down to the real issue in this case?*" Why he himself had twice before charged them that there were

two real issues in this case.

If he intended to leave to them the finding of the

two real issues in this case,

why did he tell them:

"*Now, desiring to get the jury down to the real issue in this case?*"

What had he done with the

other real issue in this case?

If he intended to leave the jury free to find for itself, why in his very next breath did he say:

"*That brings you to the fact, then, of whether or not he did withhold these pension claims?*"

What has the judge in this part of his charge done with

the other real issue in this case?

Then he says,

"*and that is the real issue.*"

Why we are told he intended to leave the jury free to find for itself.

If so, what has he done with the

other real issue in this case?

If he intended to leave the jury free to find for itself, why did he say next, "If Mr. Humes got and retained the proceeds, or retained any part of it above the notary's fee, then he is guilty."

What did the Judge do with the

other real issue in this case?

Not only did the trial court usurp and invade the

province of the jury in this case, and find the first fact for them that he himself had twice before charged that they themselves must first find before there could be any conviction, but he determined for them and so charged them what that fact was, when it was the basis of this accusation—the primary fact—condition precedent to any conviction. In short, if he had reversed his charge and found for them, and so charged them, that from all the facts in the case, the Government's proof and defendant's, oral and written, defendant was in fact guilty of wrongfully withholding pension money from pensioners, the jury could not find guilty unless they found defendant was the agent, attorney or other person instrumental in prosecuting these claims for pension before the Pension Office.

Unless he belonged to that class they could not convict him, although he admitted he withheld the money. Yet the trial court usurped and invaded the province of the jury to such an extent as to tell them what that fact was.

He, in effect, charged the jury that the defendant belonged to that class, and as such he was guilty.

The court, if the defendant had been on trial for murder, had just as well charged the jury he was satisfied, from all the facts, the defendant had done the killing, and their only province was to return a verdict of murder in the first degree. The effect of it is, the defendant has not been tried by the jury. He has been tried by the court and found guilty by the court. He has been deprived of his liberty without due process of law.

The court charged that the defendant was instrumental in prosecuting these claims for pension in the face of the fact that the *jury*, on the former trial on counts two and four of this very indictment as to these very same two, Anderson and Bloodson, *found the defendant not guilty* —found that he was not the agent, attorney or any other person instrumental in prosecuting these very claims for

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pension of either of them, and did not retain (withhold), demand or receive $486.40 from Anderson, or $517.20 from Bloodson, or any part thereof, greater compensation, etc. In disposing, on motion for new trial, of this objection, the court still said he only "*expressed to the jury the opinion that upon defendant's own testimony*"—R., p. 15. —(which was his evidence, that all he did was, as U. S. Commissioner, to administer oaths to them to their vouchers and so certify as such officer under seal, and in this he was fully corroborated by the vouchers themselves and by both Anderson and Bloodson).

"*He was instrumental in the prosecution of the pension, so far as to make him liable.*"—R., p 15.

This shows, we respectfully submit, an admission by the court that in this he usurped and invaded the province of the jury,

"but left the jury free to find the fact," he says again—R., p. 15.

Left the jury free to find what fact? One that he had told them how to find? How much freedom could they or would they exercise in finding a fact the trial court had already forestalled them by telling them how to find it? He says further, "I am unable to think now that there was any controversy whatever over this proposition, considered with reference to the proof in the case." The court was right about this, namely, that the defendant denied all the way through that he had any connection whatever with these claims, except to administer the oaths to the parties to their vouchers and to so certify in his purely official and ministerial capacity as U. S. Commissioner, under seal. All the vouchers themselves showed this, and Anderson and Bloodson both swore it. All the proof in the case, as the judge himself says, both the Government's and the defendant's, oral and written, showed the fact this way. But still it was a fact to be determined, and so long as it was, it was for the jury, and the court had nothing to do but to leave the

jury untrameled, by any opinions of his, to find how it was.

He says further: "There was no contention in the argument as to whether the defendant was agent or attorney."—R., p. 15.

This is surely the truth—all the proof showed that the defendant was not, but that others were, and it was certainly the duty of the court, this being the fact, to have charged the jury that all the proof, both the Government's and the defendant's, oral and written, showed that the defendant was not the agent or attorney, but that Powers and Chiles were.

He says: "but only whether he was instrumental." —R., p. 15.

But however it was, and if it was so, it was a fact the finding of which was the especially and peculiarly the province of the jury. And it was the right of the defendant to have the jury find that fact, untrameled by any opinions of the court.

The words of 5485 are, "Any agent or attorney, or any other person instrumental in prosecuting any claim for pension," etc.

And in the Benecke case this court add "before the Pension Office." "or any other person instrumental"— in what sense? In the sense of being and acting as any agent or attorney acts.

In the sense of prosecuting any claim for pension as any agent or attorney is instrumental in prosecuting claims for pension before the Pension Office.

So that you have plain words, going both before and after those "any other person instrumental" that limit and show what that means.

Was the defendant agent or attorney or any other person instrumental in prosecuting the claims for pension before the Pension Office, of Anderson and Bloodson, and did he demand, receive and retain (withhold) from them, or either of them, for his

services and instrumentality in prosecuting said claims for pension before the Pension Office—greater compensation, etc., to-wit: $486.40 from Anderson, and $517.20 from Bloodson, or any part thereof?

No. Not guilty, say the jury by its verdict.—R., p. 12.

Was the defendant the agent or attorney? He was not, says the Judge.—R., p. 15. Or any other person instrumental in prosecuting the claims for pension of Anderson and Bloodson before the Pension Office?

He was, the trial court said to the jury, as a fact in his charge.—R., p. 176.

In the Benecke case is found one of the tests of whether a person is or not within the statute.

Is he a person prosecuting claims for pension before the Pension Office?

The defendant was not. Powers and Chiles were the agents, attorneys and other persons instrumental, etc., and who in fact procured the granting of these very pensions for these very parties.

The essence of the offense is wrongful withholding.

The court, in its charge to the jury, in the case at bar, had told them nine times the defendant was instrumental, etc.

The court found this fact for the jury and so charged them, in the very face of the fact that the jury, on the first trial, on counts two and four, as to these very two, Anderson and Bloodson, without any such finding by the then trial court and charge, and when it was left to them to find, had found the defendant not guilty—that he was not instrumental and did not as such prosecute these very claims for pension of Anderson and Bloodson before the Pension Office; and that he did not demand, receive or retain (withhold) from them, or either of them, as such, for his services or instrumentality in prosecuting said claims for pension of Anderson and Bloodson before the Pension Office, any or greater compensation, etc., to-wit: not $486.40 from Anderson or $517.20 from Bloodson, or any part thereof.

5485 states this offense—wrongful withholding—unlawful retaining—in two aspects, described and punished in the same sentence and with the same penalty.

Its words are:

"Any agent or attorney, or any other person instrumental in prosecuting any claim for pension . . .

First, "who shall, directly or indirectly, contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension . . . than" allowed by law, i. e., $25 fee, a case under this act where fee agreements are filed.

Second, "or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant," etc., shall, etc.

In short,

First, retaining (withholding) any greater compensation, etc., and,

Second, wrongful withholding.

In short, the jury on the first trial, having found the defendant not guilty on counts two and four as to Anderson and Bloodson, both in that he was not the agent or attorney, or any other person instrumental, and was not instrumental in prosecuting their claims, and did not demand, receive or retain (withhold) from them, or either of them, anything—greater compensation, etc.—not $486.40 from Anderson, and not $517.20 from Bloodson, or any part thereof—it was certainly, to say the least of it, the duty of the court to have left again to the jury the finding of the fact of whether or not the defendant was the agent, attorney or any other person instrumental in prosecuting these claims for pension; and not to have found that fact for them and so charged them contrary to the way they first found that fact themselves, and when they were left by the then trial court to find it for themselves.

Does not the finding of the fact that he, on counts

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two and four, was not guilty—was not the agent, attorney or any other person instrumental, and was not instrumental in prosecuting these claims for pension of Anderson and Bloodson before the Pension Office, go further? Does it not go to the extent that the jury by its verdict have found and fixed the fact that he was not the agent, attorney or any other person instrumental, and was not instrumental in prosecuting these claims for pension of Anderson and Bloodson before the Pension Office?

Does it not go further? As that jury found that the defendant was not the agent, attorney or any other person instrumental, and was not instrumental in prosecuting these very claims for pension, and did not in fact demand, receive or retain (withhold) from Anderson $486.40, or of Bloodson $517.20, or any part thereof, greater compensation, etc., that the Judge on this trial should have charged the jury that the defendant was not the agent, attorney or other person instrumental, and was not instrumental in prosecuting these claims for pension before the Pension Office, and had not demanded, received or retained (withheld), wrongfully withheld $486.40 from Anderson, or $517.20 from Bloodson, or any part thereof.

In short, that the defendant was not guilty in fact as well as law. The jury having found that the defendant was not the agent, attorney or any other person instrumental, and was not instrumental in prosecuting these claims for pension before the Pension Office within the statute, and that in fact he had not retained (withheld) $486.40 from Anderson, or $517.20 from Bloodson, or any part thereof, he was therefore not guilty, in fact as well as law.

It may be suggested that the offense is stated in the statute in two ways. If that be true are they not both absolutely dependent upon identically the same two facts?

First, "was he agent, attorney or any other person

instrumental in prosecuting claims for pension before the Pension Office? and,

Second, If he was, did he wrongfully withhold—retain?

The essence of the offense in both aspects is wrongful withholding—retaining. Whether it was committed by retaining (withholding) greater compensation, or wrongful withholding, the offense is still the same.

Whether it be the one—retaining (withholding), or the other, wrongful withholding, the primary question in both is—was he agent, attorney or any other person instrumental in prosecuting claims for pension before the Pension Office?

If he does not belong to that class, then the offense is not committed; it does not make any difference if he retained (withheld) greater compensation or how. It is not retaining (withholding) or wrongful withholding within the sense and meaning of the statute as twice construed by this court in the Ballew and Benecke cases.

If the jury once, as to the same two, Anderson and Bloodson, find the fact that the defendant on counts two and four was not agent, attorney or any other person instrumental, and was not instrumental as such in prosecuting their claims for pension, and did not retain (withhold) $486.40 from Anderson, or $517.20 from Bloodson, or any part thereof, greater compensation, how can the jury, on the same offense, in the same indictment, as to the same two, Anderson and Bloodson, be allowed to find and report the same fact as having been found otherwise by them under a charge where the court itself found and charged them nine times what the first fact was, and in effect charged them that the defendant was guilty on the last fact that he apparently left them to find?

Remember that in this same indictment of nine counts, on two counts the Government, after some days' trial, declined to prosecute, and on five others the defendant was found not guilty, four times by the first jury and

once by the second, although the court in words found for them the first fact and so charged them, and in effect charged them that the defendant was guilty on the last fact, and so the verdict of guilty was reported by the jury.

I may better illustrate the idea this way: A is indicted for murder. The indictment embraces all four grades; murder in the first degree, second degree, third manslaughter, and, fourth, assault. The essence of the crime is murder. All four grades rest on the same question of fact, did A kill B? On the first trial the jury returned a verdict of not guilty, specifying they found the defendant not guilty of the second, third and fourth grades of the crime. A is called for trial before the jury for the second time on the same indictment, and on the first grade of the crime—murder in the first degree.

Is it possible that any court would hear him tried by the jury a second time on the question of murder, and would hear the court on the second trial charge the second jury that the defendant was guilty of murder in the first degree—the very highest grade of the offense? Without an instant's hesitancy, all will say no.

Where is the difference between the two cases?

In the case at bar, the primary question of fact—condition precedent to the right to convict—was, was the defendant the agent, attorney or any other person instrumental in prosecuting the claims for pension, of Anderson and Bloodson, before the Pension Office? and

Second, If he was, did he retain (withhold) $486.40 from Anderson or $517.20 from Bloodson, or any part thereof?

The indictment charges the offense in two forms: Count one charging wrongful withholding $486.40 from Anderson. Count two is the same except that it charged the retaining (withholding) of said $486.40 from Anderson, greater compensation. As to Bloodson, it was the same, being counts three and four of $517.20.

On the first trial, on a charge by the then court, leav-

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ing to the jury the finding of both the facts, they found the defendant not guilty, specifying counts two and four. That he was not the agent, attorney or any other person instrumental, and was not in fact instrumental, in prosecuting the claims of Anderson and Bloodson for pensions before the Pension Office, and that he did not demand, receive or retain (withhold) from either of them any or greater compensation, not $486.40 from Anderson or $517.20 from Bloodson, or any part thereof.

The case comes on for the second trial on counts one and three. The same identical questions of fact again.

First, was the defendant, the agent, attorney or any other person instrumental in prosecuting the claims for pension of Anderson and Bloodson before the Pension Office; and,

Second, if he was, did he wrongfully withhold $486.40 from Anderson or $517.20 from Bloodson, or any part thereof?

Is it possible that the court will hear the defendant tried by the jury the second time on identically the same two questions of fact, i. e., was he the agent, attorney or any other person instrumental in prosecuting the claims for pension of Anderson and Bloodson before the Pension Office? and if he was, did he wrongfully withhold $486.40 from Anderson or $517.20 from Bloodson, or any part thereof; and will hear the court on the second trial charge the second jury and find for them nine times the fact that the defendant was instrumental in the prosecution of these claims in such sense that if he withheld the money he would be within the provision ot the statute and guilty, and in effect that he was guilty, of wrongfully withholding the full amounts claimed?

In the illustration given of A tried for murder, how promptly would it be said on all sides that no person shall be subject for the same offense to be twice put in jeopardy.

How can it be said in the case at bar that that con-

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stitutional provision has not been violated on the last trial for the liberty, and it were better for him, for the life of the man?

These two charges that we have been discussing are so inseparably linked together that a verdict of not guilty in one must be followed absolutely by a verdict of not guilty in the other.

That is, in every case where, on the primary fact, the person is found not guilty. To make plain what I mean, if the party indicted is found not guilty—that is, that he was not the agent, attorney or any other person instrumental in prosecuting claims for pension before the Pension Office—he is then not within the statute, and cannot be guilty, whether the charge be wrongful withholding or retaining (withholding) greater compensation.

The Ballew case cited helps to illustrate this view. He was indicted for the offense in both aspects—wrongful withholding and retaining (withholding) greater compensation. He was the attorney, agent and person instrumental in prosecuting that claim for pension before the Pension Office. Of this there was no question. He had duly qualified, and was recognized by the Pension Office as the attorney, etc., of the woman from whom he withheld, and he was paid the $25 fee as such by the Pension Commissioner's order, with a check from the U. S. agent making payment of the pension allowed and due. The check for fee was to Ballew's order. He was enrolled in the pension bureau as her attorney, etc.

He was found guilty by the jury on both counts.

Why? Because the primary question settled, i. e., that he was the agent, attorney and other person instrumental in prosecuting her claim for pension before the Pension Office, the jury could well say that as such he retained (withheld) the money—greater compensation or wrongfully withheld it; or both retained it—greater compensation and wrongfully withheld it.

They could not find he did not retain (withhold) it —greater compensation, and then find that he wrongfully withheld it.

If he was the attorney, agent and other person instrumental in prosecuting her claim for pension before the Pension Office, then the sole question was, had he been guilty of wrongful (withholding) retaining? Then the question was how, under the statute? And the answer was bound to have been, under both aspects. How could you tell under which one? He was guilty of wrongful (withholding) retaining, and no power on earth could tell whether it was under the aspect of retaining (withholding) greater compensation or wrongful withholding.

But he could not be guilty of retaining (withholding) greater compensation and yet be guilty of wrongful withholding.

He was innocent or guilty of wrongful (withholding) retaining. If guilty, he was bound to have been guilty under both aspects of the statute. If not guilty, he was bound to have been not guilty under both aspects.

And the opinion of this court in the Ballew case sustains this view. How? This court held him not guilty of wrongful withholding. Why? Because he could only be guilty of wrongful withholding if he was the attorney, agent or other person instrumental in prosecuting the claim for pension before the Pension Office if he gets hold of money *due* the pensioner from the United States before the money passes into her possession and control. As it had in his case been paid over to her—was not *due*—he could not be guilty of wrongful withholding. But he was guilty of retaining (withholding) greater compensation. Why? Because the statute under which he was indicted inhibits, as this court say, the payment thereof at any other time or in any other manner than as therein provided. Thus making it clear that where it was intended to punish the offense of receiving an illegal fee, as well after the payment of the pension to

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the pensioner as before the receipt by him of the money, the intention was unequivocally conveyed, this court there say.

Again, why do I say that it was wrong for the court in the case at bar to usurp and invade the province of the jury, and find for and charge it that on the first question of fact submitted by him the defendant was instrumental in prosecuting these claims for pension before the Pension Office in such sense that if he withheld the money he would be within the provision of the statute and guilty? Because in Bloodson's case, for years before he knew the defendant at all, his pension had been granted. He and Anderson both had attorneys, agents and persons instrumental in prosecuting their claims for pension before the pension office of record, and enrolled in the pension bureau, who were, on the granting of these pensions under act June 27, 1890, on the Pension Commissioner's orders by the United States agent making payment of the same, paid the $10 fees allowed by that act. Anderson's was Chiles. Bloodson's Powers. These were the uncontroverted facts on this question. As the judge said, the Government's proof was both written and oral. And was it not the duty of the court on these facts to have charged the jury that the defendant, as shown by those facts proved by the Government, was not the agent, attorney or any other person instrumental in prosecuting these claims for pension before the Pension Office, and so not within the statute, and not guilty in fact and law.

This record proof showed that these very claims were filed by Powers and Chiles in the Pension Office as the agents, attorneys and other persons instrumental in prosecuting the same for Anderson and Bloodson before the Pension Office. They were so recognized through a long series of years. They qualified in that bureau as such. And when these pensions were granted without making any inquiry, under the orders of the Pension Commissioner, these two fee checks were sent these agents,

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attorneys and other persons instrumental in prosecuting these claims for pensions before the Pension Office, to New Orleans, their homes. And this although the person holding the office of Pension Commissioner had changed several times, from the filing to the granting of the pensions, with the incoming and outgoing administrations. Both of these claims being filed in 1890. From this proof of the government, was it not the duty of the court to have charged the jury on these facts, both written and oral, most of it matters of record from the pension bureau, that the Government, by that proof, its acts as shown by the records in those two cases, was estopped, to deny that Powers and Chiles were the agents, attorneys and other persons instrumental in prosecuting these claims for pensions of Anderson and Bloodson before the Pension Office; that the Government under those facts would not be heard, could not be heard, to say that any other person was the agent, attorney or other person instrumental in prosecuting the claims for pension of Anderson and Bloodson before the Pension Office?

Did not the court upon these further facts err in the face of them in charging the jury that the defendant, as the court had found as a fact, was instrumental in prosecuting these claims for pension of Anderson and Bloodson before the Pension Office?

And he also erred in refusing to charge just the very opposite as set out in the III assignment of error stated further on.

And if subject to the penalties of the statute, it would seem but just that the defendant should be entitled to what of benefit there is in it. And if he was the attorney, agent or any other person instrumental in prosecuting these claims for pension before the Pension Office of Anderson and Bloodson, and the Pension Bureau knew this so well in spite of all the facts to the contrary, both physical and record facts, and all the law, why did the Pension Commissioner recognize and pay the fees in these

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cases to Powers and Chiles; if he knew so well that the defendant was the agent, attorney or any other person instrumental in prosecuting these claims for pension before the Pension Bureau, and no one could have known it better, if it was a fact, or so well—why didn't the Pension Commissioner order these fee checks paid to defendant?

The law says under the Pension Commissioner's orders that these fee checks must be paid to the agent, attorney, or any other person instrumental etc., and so enrolled and recognized; and if so, and the defendant was such, did not the Pension Commissioner overlook ~~the law~~ the law himself in paying them to Powers and Chiles; in other words, if in the great zeal shown in this case until it was about changed from what it ought to have been, a prosecution, to a most bitter persecution, so that, as the record shows, four special examiners, so called, of the Pension Bureau stayed in the court room all during this trial, and that they conducted their examinations in secret, after the manner of the Star Chamber proceedings of England and the hated days of the Spanish inquisition? And it does seem that the American idea of fair play—not being spies—was hardly shown in a proceeding such as this, of so much over-zeal to consign a fellow citizen to a felon's doom and heap eternal infamy and shame on all his, in the face of the law and the facts, that they were all unwilling to allow him what under the law even was his poorest and least privilege. But the defendant stands now far above the reach of all such passions and prejudices, and where all are equal—the humblest private citizen as well as the very highest officials, who may feel they are clothed with so much power in their brief authority. He stands now before the final and highest court in the world, and his case will receive at their hand surely that calm deliberation and consideration which those involving the life and liberty of the citizen should have.

Again, this record shows that the defendant was a

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United States Commissioner, and had never done anything for Anderson or Bloodson except to administer oaths to their vouchers, and so certify in his official capacity under seal.

Section 5498 R. S. prohibits every United States officer from acting as agent or attorney in prosecuting any claims against the United States, and provides a heavy penalty, and still it has the stipulation that no such officer shall act as an agent, attorney, etc., "otherwise than in discharge of his proper official duties."

And this record shows that the defendant never did anything except within this statute, i. e., "otherwise than in discharge of his proper official duties."

And the court should have so charged the jury. And should not, in the face of this fact, have charged the jury that the defendant was instrumental in prosecuting said claims for pension before the Pension Office.

As to the proper construction of 5485, the section here involved, there are three of these statutes: First, the one here; next, that construed in Ballew's case; and the *last*, section 4, act June 27, 1890; all are for the protection of a certain class—pensioners. And they are all aimed at a certain class—any agent, attorney or any other person instrumental in prosecuting claims for pension before the Pension Office. All three are to punish, what? A single offense. What? Keeping back money from a pensioner. You find this offense aimed at in the double aspect. How? As to being kept back greater compensation, and keeping back. Whether you call it withholding, which means retaining, or retaining, which is the equivalent of withholding, the above is the substance, and shows what the offense aimed to be punished is. Many words whose meaning is the same may be used to name the same offense, as in these statutes, where retaining is used in speaking of keeping back money—greater compensation—and withholding where it is simply keeping it back. True, you find in that clause which aims at pun-

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ishing where it is keeping back money—greater compensation—the terms used are more comprehensive. It covers the offense in many different ways. If he "directly contract" he violates this first clause of the statute. If he "indirectly contract" he violates it. If he "demand" he violates it. If he "receive" he violates it; the idea being, even though it be a voluntary payment. Finally, if he "retain" he violates it—and here it may be contrary to the wish of the pensioner or with his consent. Yet as to the second clause it is limited to the single case of wrongful withholding.

You will see, too, in the indictment the terms used in the first set of counts are "wrongful withholding," and in the second "unlawful retaining." Could it be possible to find two terms of four words that are more nearly identical? So that, examining these statutes in every view, and noting the words withholding and retaining mean the same, I see no higher reason for the use of the different words than to avoid tautology if both clauses had the same word. And I am borne out in designating the offense withholding by the opinions in the Ballew, Benecke, Irwin and Frisbie cases.

5485 is less comprehensive than the other two statutes. Section 4786 as amended is extended. So is section 4, act June 27, 1890. The purpose in referring to these statutes is to show the marked differences in them.

In looking to the proper construction of a statute, that the whole of it will be considered, is a cardinal rule of construction. If there are any words of doubtful construction, that the words used in the same sense which are of plain meaning will be looked to in construing what the words of doubtful meaning are, is another cardinal rule.

The plain meaning of the words in 5485 is that—any agent, attorney or any other person instrumental (who is the means) in prosecuting any claim for pension (before the Pension Office), who shall retain any greater

compensation for his services or instrumentality (agency) in prosecuting any claim for pension (before the Pension Office).

Instrumental in what? In prosecuting a claim for pension.

And the opinions in the Ballew and Benecke cases show these words have a definite signification. They make it applicable alone to certain individuals. The words limit it to that class.

And so the word prosecuting has a definite signification in these statutes. It means to institute and carry on a legal proceeding.

Here, then, is any agent, attorney or any other person (in the sense as an agent or attorney) instrumental—who is the means) of instituting and carrying on this legal proceeding to obtain a pension before the Pension Office.

This is the certain class who fall within the statute, those prosecuting claims for pension before the Pension Office, as this court said in the Ballew and Benecke cases.

And the law and rules of the Pension Department have requirements that must be complied with before one can become agent, attorney or any other person (as attorney and agent) instrumental in prosecuting claims for pension before the Pension Office. He must take the oath of allegiance—3487.

The regulations of the department provide that any attorney, agent or any other person who desires to represent claimants before it or one of its bureaus must file a certificate, etc.

"An applicant for admission to practice," it says, must address a letter to the Secretary of the Interior, inclosing the certificate and oath required.

He must state if he is a United States officer, etc.

On this being granted he shall be recognized, enrolled and permitted to appear in any case.

This is the class who alone are within the statute.

And in these regulations of the department you have the practical construction that was given by it of these very statutes.

And it was a construction by one who was afterwards Associate Justice of this court. And it is not flattery to say he was a great jurist and statesman who had spent years in making these laws. I refer to Mr. Justice Lamar. No one, therefore, was more familiar with them than he, or better able to say what they meant.

No United States officer can be any agent, attorney or any other person (as agent or attorney) instrumental in prosecuting these claims for pension before the Pension Office, under the regulations of 5498. He is prohibited from being. He can do nothing "otherwise than in discharge of his proper official duties." If the defendant had applied as required, would they have granted him a permit to practice? No. It was impossible for him to have done so, because he was a United States Commissioner and ineligible, and no one knew it better or had fixed it more certainly than the Pension Bureau by its own regulations.

It can't be possible that the words "any other person instrumental in prosecuting any claim for pension before the Pension Office mean any one that administers in his purely official and ministerial capacity all oaths, and so certifies under his seal of office.

This trial court, if such a construction as it has given is the right one, over-rules the opinions in the Ballew and Benecke cases, which held the statutes alone applicable to a certain class of individuals; and makes it applicable to every one who puts his hand on—touches—a pension claim in any way.

The word due is read out of the statute. If he got the money before or after it passed and was paid to the pensioner and went into her possession and under her absolute control, if he obtained the money by false pretense, he is within the statute. Whether it is larceny and

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not embezzlement he is within the statute. The guardian is just as much guilty if he got the money by fraud after he paid it over when his ward was grown as when he was a minor. Those prosecuting claims for pension before the pension office mean nothing. The statutes have opened, according to this rule of construction by this trial court, to let in all the world. There are no limitations on the words or the provisions of the statutes. The verdict of not guilty on the facts as found by the first jury is nothtng. They must report guilty whether he is or not. It seems to us that this is the only line of reasoning to be deduced from such a charge as that of this trial court in the case at bar.

Two marked reasons that show how definite and significant are the meaning of the words in these statutes are those to be found in the opinions in the Ballew and Benecke case.

In the Ballew case this court say "certain persons standing in a fiduciary relation to the pensioner."

Here is found one of the crucial tests of whether the person is within the provisions of the statute.

Does he occupy such a relation to the pensioner and his claim as that he might lawfully obtain possession of the same from the government, and upon whom rested the duty of paying it over to the pensioner?

Is he one of those persons prosecuting claims for pension before the Pension Office?

If yes can be answered to these questions, then he is within the provisions of this statute. If no, then he is not.

This court in Ballew's case say further:

"If withholding had been considered as applicable to the obtaining of pension money from the pensioner by false pretenses, the limitation as to particular persons would not have been enacted.

"Indeed, to construe the word 'withholding' as relating to money received from a pensioner, not only

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reads the word 'due' out of the statute, but also leads to the inevitable conclusion that Congress, whilst intending to make it an offense to obtain from a pensioner money by false pretenses, has yet confined the offense to particular individuals, and permitted all others to commit with impunity the crime it was intended to punish.

"It also follows, if the statute be construed as embracing money obtained from a pensioner by false pretense, that the act forbids withholding money thus obtained, but does not forbid or punish the act of obtaining money by false or fraudulent pretense.

"These reasons make it clear that the purpose of the statute in punishing a withholding by certain persons standing in a fiduciary relation to the pensioner is consistent only with the theory that Congress was legislating to prevent an embezzlement of pension money, not a larceny thereof from the pensioner, or the obtaining of the same from him by false pretenses."

This further from the opinion shows that the words of these statutes have a definite signification.

"The refusal of the court to give the charge asked, and the charge given, proceeded upon the theory that although pension money was actually paid over to the pensioner, and by her deposited in bank, the obtaining thereafter of such money from the pensioner constituted a withholding under the statute. . . The word 'withholding' has a definite signification: we think contemplates, as used in the statute, . . . not the fraudulent obtaining of money from a pensioner, but the withholding of the money from, before it reaches the hands of the pensioner and passed under his dominion and absolute control. The context of the statute supports this view, for its penalty is imposed for the wrongful withholding of the whole or any part of the pension claim allowed and due such pensioner, and not for the wrongful obtaining of the same.

"The fact that the offense of withholding is limited to any agent or attorney or other person instrumental in

prosecuting any claim for pension demonstrates that Congress intended to legislate merely against the wrongful withholding by certain individuals who, by reason of their relation to the pensioner and his claim, might lawfully obtain possession of the same from the Government and upon whom rested the duty of paying it over to the pensioner. . . . . .

"This construction of the statute is further supported by reference to act Mar. 3, '73, c. 234, 17 Stat., 566, in sec. 31 (p. 575) of which is contained the provision making it an offense to withhold pension money. In juxtaposition to that sec. is sec. 32, being 4745.

"The signification which we affix to the word 'withholding' is also shown to be the one intended by Congress, by the previous portion of the paragraph act 84, which not only makes it an offense to directly or indirectly contract for, demand, receive or retain any greater compensation for services, or instrumentality in prosecuting a pension claim than allowed by the act, but specifically inhibits the obtaining of payment thereof 'at any other time or in any other manner' than as provided in the act, thus making it clear that where it was intended to punish the offense of receiving an illegal fee, as well after payment of the pension to the pensioner as before the receipt by him of the money the intention was unequivocally conveyed. The clause 'payment thereof at any other time or in any other manner than is herein provided' was not contained in the act 73, sec. 5485 R. S., but was first embodied in the act 84; whereas the provision as to withholding of a pension 'due' the pensioner.

"In the very next sentence of act 73, following the designation of the offense of withholding, there is a provision affixing a penalty to the offense of embezzlement of pension money by a guardian from his ward.—Sec. 4783 R. S. It may be remarked in passing, that it would be as reasonable to argue that one who had fully accounted

as guardian and paid over to his ward the balance due, when the ward had attained majority, could be prosecuted under sec. 4783, if, after such accounting and payment, he fraudulently obtained money from his former ward which might from the proof appear to be a portion of the balance so paid on the accounting, as to contend that when a pension allowed and due from the Government had been paid to the pensioner, it continued to be 'due' in any money transaction between the pensioner or his former agent or attorney.

"The instruction given by the trial court that there was a withholding under the statute, if the transaction in this case was a continuous scheme designed by the accused for the purpose of getting into his possession a portion of the pension money, made his guilt or innocence depend not alone upon whether there was a scheme to defraud. *It was tantamount to instructing the jury that they should convict, even though they were satisfied that the money had not been withheld*, if they believe that before payment over, a scheme to defraud had arisen which was carried out after the pensioner had received the amount of the pension and after it had been by her deposited in bank, and created between her and the bank the legal relation of debtor and creditor. Of course, if the indictment had been so framed as to bring the facts, which it is alleged constituted a withholding, within the reach of the first clause of the statute, which forbids the taking of illegal compensation, the instruction given by the court would have been sound. In that case, the taking of money is made criminal, whether done before payment to the pensionor, at the time of such payment, or any other time; withholding, on the contrary, is confined to money due, which, in no sense, embraces that which has been actually paid over to a pensioner and has passed under his control. However, much pension money, even when taken into possession of a pensioner, may retain its identity for certain purposes, we do not think, for the

reasons just stated, that this instruction given was sound law. The elementary rule is that penal statutes must be strictly construed and it is essential that the crime punished must be plainly and unmistakably within the statute. . . It follows, therefore, that the instruction asked was wrongfully refused and the instruction given was erroneous, and there was error in conviction as to the first count in the indictment."

Another strong reason I submit is shown by this record which puts it beyond question that the trial court did not leave the jury free to find for itself the first question of fact as to whether defendant was any other person instrumental in prosecuting said claims for pension and only meant to express an opinion to which they should pay not the least heed.—R., p. 179.

The trial court said: "Now, I have undertaken, somewhat *tediously*, to direct your attention to the proof on the other question of fact as to whether or not defendant withheld the money.

And as he there states he did talk a long time on his view of this question of fact.

But take his charge, and with a judge that shows such great fondness for talking so long and so much on his own one view of one fact that he himself says he has done so "*somewhat tediously*," and you will not find one word, one syllable, one single letter, in this long ten-page printed charge; not one single reference or mention of the facts as to whether or not the defendant was any other person instrumental in prosecuting these claims for pension "before the Pension Office."

Would this be true, could this be true, with a judge shown so fond of commenting at such great length upon his own view of a fact, unless he felt sure he had fixed it by his words so there could be with the jury no question about it or how it was?

Anderson testified he made his application with Dedrick.—R., p. 19.

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His voucher showed Chiles was his attorney of record and paid the fee.

Bloodson swore same.—R., p. 57. Powers was his attorney, as his voucher showed, and got the $10 fee.

Defendant swore he never was a pension attorney.—R., p. 113.

This trial judge says: "There was no contention in the argument as to whether the defendant was agent or attorney.—R., p. 15.

Defendant also swore that all he did was to administer to the parties the oaths to their vouchers as United States Commissioner and so certify under his seal in his purely official and ministerial capacity as such.—R., p. 118. Bloodson's pension was granted as shown, Dec. 11, '91. He spoke to Mr. Humes about it in the fall of 1894.—R., p. 79. His first papers were lost. How could Mr. Humes be any other person instrumental in prosecuting a claim for pension before the Pension Office where the pension was granted nearly three years before Bloodson knew Humes, or he him. And yet no comment is made on any of this proof by the trial court. And still we are told the jury was left free to find for itself and the trial court only expressed an opinion that it was intended the jury should pay no heed to.

The jury should have been left to find the facts untrammeled by any opinion of the trial court.

In Mills v. U. S., 164 U. S., 646, this court, by Mr. Justice Peckham, say. "No portion of the charge of the court, under such circumstances, can be said to be harmless if it did not state correctly and fully the law applicable to the crime, even although it may be urged that in other portions of the charge the correct rule was laid down.

"*How much of this testimony was credible, and what inference ought to be drawn from it all, were matters for the sole consideration of the jury, and the mere charge taken for proper proof of the crime on the part of the person on trial.*"

This court in Stevenson v. U. S., 162 U. S., 341, by Mr. Justice Peckham, say: "*The evidence as to a fact need not be uncontradicted, or in any way conclusive upon the subject; the proper weight to be given it is for the jury to determine. If there were any evidence which tended to show such a state of facts, ... it then became a proper question for the jury to say whether the evidence were true, and whether it shows that the crime was such. . It is difficult to think of a case . . . . that the question would not arise for the jury to answer . . . . The evidence might appear to the court to be simply overwhelming . . . . and yet, so long as there was some evidence relevant to the issue, . . . the credibility and force of such evidence must be for the jury and cannot be matter of law for the decision of the court. . . . There must, of course, be some evidence which tends to bear upon that issue. The jury would not be justified in finding a verdict . . if there were no evidence upon which to base such finding. . . . . The ruling of the learned judge was to the effect . . . . that under no view which could possibly be taken of the evidence would the jury be at liberty to find the defendant guilty of manslaughter.*"

"*The court passed upon the strength, credibility and tendency of the evidence, and decided as a matter of law what it seems to us would generally be regarded as a question of fact, viz: whether under all the circumstances which the jury might, from the evidence, find existed in the case, etc., ... and yet this question of fact is, under the evidence in the case, determined by the trial court as one of law and against the defendant . . . .* that portion of the evidence . . which might be regarded as tending to show that the defendant was only guilty, etc.

"*If there was some appropriate evidence upon that subject, its proper weight and credibility were for the jury. . . There was evidence tending to show . . . . the evidence given upon the trial tending to show the circumstances, etc. . . .*

"*Was there enough, in any view that could be taken of*

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such evidence, to require the submission of the question to the jury? We think there was, and the request of counsel for plaintiff in error should have been granted, . . but it seems to us entirely clear that there was enough to ask the jury to decide, ... upon all the evidence in the case. . . .

"The jury should have been permitted to determine the credibility of the evidence, ... would not a jury have the right to say:

"Is it not clearly a question of fact for a jury to determine and from the whole facts and circumstances the jury infers the only way to decide its condition . . . . . is to infer it from the surrounding facts, and that inference is one of fact for the jury, but taking all the evidence in this case, we think it is one for the jury to determine upon the issue.

"Who is to make the inquiry, the court or the jury under proper instructions from the court? There might be cases where the uncontradicted evidence was so clear and overwhelming . . . . that a court might be justified in stating to the jury if they found the evidence to be true, they ought to infer; but this is not such a case.

"The ruling of the trial judge in effect was to say that as matter of law there was nothing in all this evidence, if true, which would permit the jury to find that the plaintiff in error was, etc.

"Is it perfectly plain and clear, as a conclusion of law, that etc.

"If it is not to be asserted as matter of law, then it becomes a question of fact in such case, and that question must be answered by the jury.

"Whether the witnesses told the truth in regard to such circumstances is not for the court to say, nor is it for the court to decide upon the weight to be given to them if proper for the consideration of the jury.

"But why should the other issue be taken from the jury and they not be permitted to pass upon it as a question of fact?

"It cannot be properly regarded as a question of law.

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"A judge may be entirely satisfied from the whole evidence in the case, ... and yet if there be any evidence fairly tending to bear upon the issue, . . it is the province of the jury to determine from all the evidence, ... and to say what the crime was, . . the question as to which was to be credited was for the jury, and should not have been taken from it by the court, . . there was certainly sufficient evidence on that issue to render it necessary to submit it to the jury. We have no power and no inclination to pass upon that question of fact. We only decide that the question should have been submitted to the jury as well as the other question of fact. For the error in refusing to do so, the judgment of conviction must be reversed and the cause remanded to the court below with instructions to grant a new trial."

This court in Hickory v. U. S., 160 U. S., 413, say: *"The legal influence which this language must have exerted on the jury was increased by the subsequent instruction"*—as in the case at bar repeating the same thing many times as to defendant being instrumental in prosecuting these claims for pension and getting the jury down to the real issue, and did he wrongfully withhold the pension money, etc., and that being the real issue. If he did withhold, he is guilty, etc. If he did not, he is not—etc. If Anderson got the money that ends the case. If Humes got it, he is guilty, etc.

Using the words of the opinion cited: *"Putting this language in connection with the* 'many other charges,' *it is justly to be deduced that its effect was to instruct that the defendant was 'guilty,' and therefore the only province of the jury was to return a verdict of guilty."* That opinion states: *"It is true that a subsequent portion of the charge refers to evidence . . . as proper to be taken into consideration as evidence. But these qualified remarks did not recall the undue weight which the previous language had affixed to the facts to be considered by the jury."* In the case at bar the instructions complained of were tantamount to saying

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to the jury the defendant was guilty if it was not so in words. The opinion in the case cited goes along this same line of reasoning; it says: "*On this subject, also, it is true the charge thus given was apparently afterwards qualified by the statement that the jury had a right to take the fact . . into consideration, but these words did not correct the illegal charge already given. Indeed, taking the instruction . . . . . with the qualifying words subsequently used, they were both equivalent to saying to the jury that they were, in considering the facts, to give them the weight which, as matter of law, the court declared they were entitled to have, that is . . . . . so well settled as to amount virtually to a conclusive proof of guilt.*"

"In Starr v. U. S., 153 U. S., 626, in considering the power of a Federal court to comment in charging a jury on the evidence, we quoted with approval the language of the Supreme Court in Burke v. Maxwell, 81 Penn St., 150, saying: "*When there is sufficient evidence upon a given point to go to a jury, it is the duty of the judge to submit it calmly and impartially.*

"*And if the expression of an opinion upon such evidence became a matter of duty under the circumstances of the particular case, great care should be exercised that such expression should be so given as not to mislead, and especially that it should not be one-sided The charge given in this case violates every rule thus announced. It was neither calm, nor was it impartial. It put every deduction which could be drawn against the accused from the proof, ... and omitted or obscured the converse aspect. In so doing it deprived the jury of the light requisite to safely use these facts as means to the ascertainment of truth. Nor can it be considered that the language used corrected the error. . . . . Indeed, taking the language af the charge which follows the foregoing words, it must have conveyed by the strongest possible intimation the impression to the jury that the case before them was controlled by the general rule previously stated to them by the court, although other cases might be an exception to such rule.*"

"Measuring the correctness of the charge now considered by these principles and authorities, it is at once demonstrated to have been plainly erroneous."

"It magnified and distorted the proving power of the facts."

"Considering the entire context of the charge, it practically instructed that the facts were . . . . . conclusive proof of guilt."—P. 421.

Quoting from the charge of the trial judge in this case:

"You are to see whether they harmonize with this statement of this transaction as given by the defendant, bearing in mind that he stands before you as an interested witness, while these circumstances are of a character that they cannot be bribed, that cannot be dragged into perjury, they cannot be seduced by bribery into perjury, but they stand . . in opposition to and confronting this defendant, who stands before you as an interested party, the party who has in this case the largest interest a man can have in any case upon earth. While you are not to disbelieve his evidence because of that alone, you are to weigh these facts and see whether they harmonize with his statement when viewed by the light of your intelligence; and when this case is illumined by such facts, whether it is in harmony with the statements of this interested witness, or in contradiction of them."

Then this court say:

"It is apparent that this part of the charge is replete with the errors which we have already found to exist in the matter which we have already considered. But the instruction contains an additional error of so grave a nature that we call attention to it in order to prevent its recurrence.

"The manner of contrasting the testimony of the accused . . . was clearly illegal. . . . This contrast thus made could have conveyed but one meaning to the jury, that is, a warning that the testimony of the

accused was to be considered by them as of little or no weight because he could be bribed, he could be dragged or seduced into perjury. Such denunciation of the testimony of the accused is without legal warrant. Indeed, this instruction, besides giving rise to this error, was also, if possible, more markedly wrong from the implications which it conveyed to the jury. It substantially said to them the circumstances . . . . cannot be bribed, but the defendant can be; therefore, you must consider that these circumstances outweigh his testimony, and hence it is your duty to convict him."

In Allison vs. U. S., 160 U. S., 207, this court says: "The question was for the jury to determine, from all the facts and circumstances adduced in evidence . . . And it was for the jury to test the credibility of the defendant as a witness . . . . uninfluenced by instructions which might operate to strip him of the competency accorded by law. We repeat what was said by Mr. Justice Shiras, for the court, in Hicks vs. U. S., 150 U. S., 452. . . . . 'And perhaps a judge cannot be considered as going out of his province in giving similar caution as to the testimony of the accused . . . . if the judge, to whose lightest word the jury properly enough give great weight, should intimate that the dreadful condition in which the accused finds himself should deprive his testimony of probability . . . . . The policy of this enactment should not be defeated by hostile intimations of the trial judge, whose duty it is to give reasonable effect and force to the law.

"While the trial judge may not have intended to be understood that the defendant could not prove his defense by his own testimony, and had it in his mind simply to warn the jury that they should not rely on the defendant's opinion that his conduct was justifiable, but on the facts, or what reasonably appeared to him to be such, we think these remarks had a much wider scope, and must have been so understood by the jury . . . . . and it was

for the jury to say from the evidence what were the facts. And if the jury regarded the remarks of the court as applicable generally to defendant's testimony then defendant was practically deprived of its benefit, and the statute enabling him to testify was rendered unavailing. In our opinion the liability of the jury to thus understand these observations was so great that their utterance constitutes reversible error. Nor was this error obviated by what, some time after, . . . was said by the trial judge. . . . . If this could be, in any aspect, treated as a modification of the previous assertions of the court, it was too far separated from that connection to permit us to attribute that operation to it, and moreover, it was in itself erroneous. As a witness, a defendant is no more to be visited with condemnation than he is to be clothed with sanctity, simply because he is under accusation, and there is no presumption of law in favor of or against his truthfulness.—P. 210.

"Justice and law demand that so far as reference was made to the evidence, that which was favorable to the accused should not be excluded. His guilt or innocence turned on a narrow hinge, and great caution should have been used not to complicate and confuse the issue. But the charge above quoted ignored the evidence tending to show what defendant's proof was; and invited the jury to contemplate the spectacle, . . . unrelieved by allusion to defensive matter, which threw a different light on the transaction.

"If there were evidence, and as to this the record permits no doubt, tending to establish that defendant, etc., ... then this disquisition of the court was calculated to darken the light cast . . . as defendant claimed them to be, and of this he had just cause to complain, even though there were competent evidence indicating the opposite as frequently intimated by the court—intimations which we fear seriously trenched on that untram-

meled determination of the facts by a jury to which parties accused are entitled.—P. 213.

"The logical inference was this . . . and another and inconsistent inference could not be arbitrarily substituted by the trial court . . . graphic language of the court and . . . speculation as to his mental process was uncalled for . . . . . .

"And it is for the jury and not for the judge, passing upon the weight and effect of the evidence, to determine how this may be. In this case it was essential to the defense that the jury should be clearly and distinctly advised as to the bearing, &c. It is open to criticism, and even extenuating circumstances.

"Such an instruction was not only misleading in itself, but it was erroneous in the present case, for the further reason that it omitted all reference to the conduct of the deceased at the time.

"Where the charge of the trial judge takes the form of animated argument, the liability is great that the propositions of law may become interrupted by digression, and so intermingled with inferences springing from forensic ardor, that the jury are left without proper instructions, their appropriate province of dealing with the facts invaded, and errors intervene which the pursuit of a different course would have avoided. Case reversed and remanded for a new trial."

In Davis v. U. S., 160, U. S., 493, this court (Justice Harlan) say: "No man should be deprived of his life (and we add or liberty) under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them, by whomsoever adduced, is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged."

In Alberty v. U. S., 162, U. S., 508, this court (Justice Brown) say: "but what the facts were was a question for the jury."

In Allen v. U. S., 157, U. S., 675, this court say: "Instruction erroneous in withdrawing from jury question of fact."

The II. assignment of error that we have just been arguing shows we submit the error committed by the trial court in what he did charge the jury, we now also submit the III. assignment of error showing that he erred in not giving in his charge to the jury what was there requested. We shall not undertake to go over the argument again. As kindred questions, we intended that they be presented and considered together. The argument on the one is equally applicable to the other. They are the counterparts of each other. They show the commitment of affirmative error by the trial court both ways. They show that he erred in the charge that he did give the jury, and that he also equally erred in refusing to give what he was asked to on the same point.

III. ASSIGNMENT OF ERROR.

It is further assigned as error that the court refused to give the special instruction asked by defendant in the following words and figures: "Unless you find from the evidence that defendant was the attorney, agent, or other person engaged in prosecuting the pension claims of Anderson, Haynes and Bloodson, then the court instructs you to find for defendant.

We respectfully submit that this was error, because in such special instruction the jury are required to find what was the fact as to defendant's connection with the procuring or prosecution of Anderson's or Bloodson's claim for pension money.—R., p. 197.

R., p. 181, where the trial court refused to give this charge, you see again what a strange reason he gives for refusing it. He says: "I think I have given this instruction in the general charge, and believing the charge on this point is sufficiently full, further instruction is declined."

He had given this in the general charge. That is he had given it in the general charge to the jury that he had found as fact that the defendant was instrumental in the prosecution of these claims in such sense that if he withheld the money he would be guilty.

"And believing the charge on this point is sufficiently full, further instruction is declined."

There is no question about its being sufficiently full—it is full to overflowing. It is too full, that is the real and true objection to it. The trial court found for the jury and so charged them that as a fact defendant was instrumental in the prosecution of these claims in such sense that if he withheld the money he was guilty. It is that to which we really object.

XIII. ASSIGNMENT OF ERROR.

The verdict of the jury is against the weight of the evidence:

1. The evidence preponderates in favor of the accused.

2. If this be not so, it is not sufficient to overcome the presumption of innocene and establish the guilt of defendant beyond a reasonable doubt.—R., p. 199.

The trial court erred in its charge to the jury on the presumption of innocence.—R., p. 174.

The only element of law in the proposition was not stated.

The error complained of in the charge of the trial court is that he did not tell the jury that the presumption of innocence was evidence for the defendant. That it was the witness created by the law in favor of the accused and stood for him with the other evidence until overturned by proof showing his guilt beyond a reasonable doubt—"legal evidence of guilt, carrying home a degree of conviction short only of absolute certainty." Defendant had the rigt to have the presumption of innocence so

stated and explained and expounded to the jury by the trial court.

In nearly a page of printed matter the trial court fail[illegible] the (R., p. 174) rule of evidence in a criminal and a civil case and reasonable doubt, but we respectfully submit it is not a correct statement of the law in regard to reasonable doubt, and in it, too, we submit the trial court erred. In the Coffin case, page 160, the whole doctrine of reasonable doubt is properly stated.

And nothing better illustrates the error committed upon this question of the presumption of innocence than what the trial court did say in the case at bar when compared with the opinion in the Coffin case.

How much effect can the mere annunciation of the abstract proposition of law of the presumption of innocence have upon a jury unlearned in the law if it is intended that the accused should have the benefit of it. And nothing more aptly illustrates it or more sharply and strongly points it out than the opinion in the Coffin case.

Here in the case at bar we are told that all that is needed is to simply say that the accused is presumed to be innocent to a jury unlearned in the law and the rights of the accused will be fixed thereby without telling the jury that it is the witness created by the law in favor of the accused that with the other evidence must stand for him until overturned by evidence to the contrary showing his guilt beyond a reasonable doubt—"legal evidence of guilt, carrying home a degree of conviction short only of absolute certainty."

In the Coffin case the opinion there shows us that in the very highest court of the greatest nation of the earth, there at the hands of its judges, the most learned in the law and crowned with years of the richest experience, they traced this question back to about the very foundations of the world, and almost through all nations, ages and times—depth of research, deliberation and

investigation—and expounded it so that the man who reads can easily understand it. All this time and labor bestowed on this question by this court of last resort to learn what it is and be sure to state it right. And yet we are told that a jury unlearned in the law will know it all when it is simply fired at them in a passing moment in a few lines with printed pages of many other things as the simple naked legal proposition of the presumption of innocence without a single word of explanation as to what it is or means. This cannot be true.

In Coffin v. U. S., 156 U. S., 458, this court by Mr. Justice White, say: "Now the presumption of innocence is a conclusion drawn by the law in favor of the citizen, by virtue whereof, when brought to trial upon a criminal charge, *he must be acquitted* unless he is proved to be guilty. *In other words, this presumption is an instrument of proof created by the law in favor of one accused, whereby his innocence is established until sufficient evidence is introduced to overcome the proof which the law has created.* This presumption on the one hand, supplemented by any other evidence he may adduce, and the evidence against him on the other, *constitute the elements from which the legal conclusion of his guilt or innocence is to be drawn*"

Greenleaf thus states the doctrine:

"As men do not generally violate the penal code, the law presumes every man innocent; but some men do transgress it, and therefore evidence is received to repel this presumption. This legal presumption of innocence is to be regarded by the jury, in every case, *as matter of evidence, to the benefit of which the party is entitled.*"

Wills says:

"In the investigation and estimate of crimnatory evidence there is an antecedent *prima facie* presumption in favor of the innocence of the party accused, grounded in reason and justice, not less than in humanity, and recognized in the judicial practice of all civilized nations;

which presumption must prevail until it be *destroyed by such an overpowering amount of legal evidence of guilt as is calculated to produce the opposite belief.*" Best declares the presumption of innocence to be a "*presumptio juris.*" The same view is taken in the article in the Criminal Law Magazine for January, 1889, supra. It says:

"This presumption is in the nature of evidence in his favor (i. e., in favor of the accused), and a knowledge of it should be communicated to the jury. Accordingly, it is the duty of the Judge in all jurisdictions, ... , to explain it to the jury in his charge.

"The fact that the presumption of innocence is recognized as a presumption of law and is characterized by the civilians as a *presumptio juris* demonstrates that it is evidence in favor of the accused. For in all systems of law legal presumptions are treated as evidence giving rise to resulting proof to the full extent of their legal efficacy.

"Concluding, then, that the presumption of innocence is evidence in favor of the accused, introduced by the law in his behalf, let us consider what is a 'reasonable doubt.' It is of necessity the condition of the mind produced by the proof resulting from the evidence in the cause. It is the result of the proof, not the proof itself; whereas the presumption of innocence is one of the instruments of proof, going to bring about the proof, from which reasonable doubt arises; thus one is a cause, the other an effect. To say that one is the equivalent of the other is therefore to say that legal evidence can be excluded from the jury, and that such exclusion may be cured by instructing them correctly in regard to the method by which they are required to reach their conclusion upon the proof actually before them. In other words, that the exclusion of an important element of proof can be justified by correctly instructing as to the proof admitted. The evolution of the principle of the presumption of innocence and its resultant, the doctrine of reasonable doubt,

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makes more apparent the correctness of these views, and indicates the necessity of enforcing the one, in order that the other may continue to exist. Whilst Rome and the Mediævalist taught that wherever doubt existed in a criminal case, acquittal must follow, the expounders of the common law, in their devotion to human liberty and individual rights, traced this doctrine of doubt to its true origin, the presumption of innocence, and rested it upon this enduring basis. The inevitable tendency to obscure the results of the truth, when the truth itself is forgotten or ignored, admonishes that the protection of so vital and fundamental a principle as the presumption of innocence be not denied, when requested, to anyone accused of crime. The importance of the distinction between the two is peculiarly emphasized here, for, after having declined to instruct the jury as to the presumption of innocence, the court said:

"If, after weighing all the proofs and looking only to the proofs, you impartially and honestly entertain the belief," etc. Whether thus confining them to "the proofs," and only to the proofs, would have been error if the jury had been instructed that the presumption of innocence was a part of the legal proof, need not be considered, since it is clear that the failure to instruct them in regard to it excluded from their minds a portion of the proof created by law, and which they were bound to consider. "The proofs and the proofs only" confined them to those matters which were admitted to their consideration by the court, and among these elements of proof the court expressly refused to include the presumption of innocence, to which the accused was entitled, and the benefit whereof both the court and the jury were bound to extend him.

"The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its inforcement lies at the foundation of the administration of our criminal law. It is

stated as unquestioned in the text books, and has been referred to as a matter of course in the decisions of this court and in the courts of the several states. (Authorities cited).

"Greenleaf traces this presumption to Deuteronomy, and quotes Mascardus De Probationibus to show that it was substantially embodied in the laws of Sparta and Athens. Whether Greenleaf is correct or not in this view, there can be no question that the Roman law was pervaded with the results of this maxim of criminal administration, as the following extracts show:

"Let all accusers understand that they are not to prefer charges unless they can be proven by proper witnesses or by conclusive documents, or by circumstantial evidence which amounts to indubitable proof and is clearer than day.

"The noble (divus) Trajan wrote to Julius Frontonus that no man should be condemned on a criminal charge in his absence, because it was better to let the crime of a guilty person go unpunished than to condemn the innocent.

"In all cases of doubt, the most merciful construction of facts should be preferred.

"In criminal cases the milder construction shall always be preserved.

"In cases of doubt it is no less just than it is safe to adopt the milder construction.

"Ammianus Marcellinus relates an anecdote of the Emperor Julian which illustrates the inforcement of this principle in the Roman law. Numerius, the Governor of Narbonenis, was on trial before the Emperor, and contrary to the usage in criminal cases, the trial was public. Numerius contented himself with denying his guilt, and there was not sufficient proof against him. His adversary, Delphidius, 'a passionate man,' seeing that the failure of the accusation was inevitable, could not restrain himself, and exclaimed, 'Oh, illustrious Cæsar, if it is

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sufficient to deny, what hereafter will become of the guilty?' To which Julian replied, 'If it suffices to accuse, what will become of the innocent?'" The rule thus found in the Roman law was, along with many other fundamental and humane maxims of that system, preserved for mankind by the canon law. Exactly when this presumption was in precise words stated to be a part of the common law is involved in doubt. The writer of an able article in the *North American Review*, January, 1851, tracing the genesis of the principle, says that no express mention of the presumption of innocence can be found in the books of the common law earlier than the date of "McNally's Evidence," 1802. Whether this statement is correct is a matter of no moment, for there can be no doubt that, if the principle had not found formal expression in the common law writers at an earlier date, yet the practice which flowed from it has existed in the common law from the earliest time.

"Fortescue says: "Who, then, in England can be put to death unjustly for any crime? since he is allowed so many pleas and privileges in favor of life; none but his neighbors, men of honest and good repute, against whom he can have no probable cause of exception, can find the person accused guilty. Indeed, one would much rather that twenty guilty persons should escape the punishment of death than that one innocent person should be condemned and suffer capitally."

"Lord Hale (1678) says: "In some cases presumptive evidence goes far to prove a person guilty, though there be no express proof of the fact to be committed by him, but then it must be very warily pressed, for it is better five guilty persons should escape unpunished than one innocent person should die." He further observes: "And thus the reasons stand on both sides, and though these seem to be stronger than the former, yet in a case of this moment it is safest to hold that in practice which hath least doubt and danger, quod dubitas, ne feceris."

"Blackstone (1753–1765) maintains that the law holds that it is better ten guilty persons escape than that one innocent suffer."

"How fully the presumption of innocence had been evolved as a principle and applied at common law is shown in McKinley's case (1817), where Lord Gillies says: "It is impossible to look at it (a treasonable oath which it was alleged that McKinley had taken) without suspecting and thinking it probable it imports an obligation to commit a capital crime. That has been and is my impression. But the presumption in favor of innocence is not to be re-argued by mere suspicion. I am sorry to see, in this information, that the public prosecutor treats this too lightly; he seems to think that the law entertains no such presumption of innocence, and I cannot listen to this. I conceive that this presumption is to be found in every code of law, which has reason, and religion, and humanity for a foundation. It is a maxim which ought to be inscribed in indelible characters in the heart of every judge and juryman; and I was happy to hear from Lord Hermand he is inclined to give full effect to it. To overturn this, there must be legal evidence of guilt, carrying home a degree of conviction short only of absolute certainty."

And this doctrine of presumption of innocence was reiterated by this court in the Davis case supra, by Mr. Justice Harlan.

After failing in the charge as shown to instruct the jury that the presumption of innocence is a part of the legal proof for them to consider in favor of the defendant that must stand for him with the other proof until it is overturned by legal evidence of guilt, carrying home a degree of conviction short only of absolute certainty, and giving, as is seen, the careless, loose, rambling statement about the rule of evidene in a civil and criminal case and reasonable doubt, then the trial court starts on in the charge (R., p. 174) to disparage the defendant as a wit-

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ness to the jury. He says: "Now, the defendant is permitted to testify in his own behalf."

Just allowed to testify, that is all—he says in substance. And by what he says next how completely he destroys the defendante as a witness.

"And the fact of his motive or interest to escape punishment no longer disqualifies him as a witness."

"He is a competent witness, and it becomes your duty to accept him as competent."

"And it becomes your duty." What an intimation! Not your privilege but your duty. However painful a duty it may be, it is your duty, and you must accept him. I know you don't want to do so, is the intimation, and I don't want you to; but it is your duty and you have to accept him, and accept him as competent.

And then the court begins to demolish his competency as a witness and emphasizes it by what he says:

"And to duly weigh and consider his testimony, and the motive that he labors under, no longer disqualified him as a witness, goes to his credibility, and is to be considered by you as a circumstance in determining what weight you will give to his testimony given in his own favor. You should consider the fact that he labors under a strong motive to escape conviction and punishment or disgrace by testifying to a state of facts that exculpate him from the charge against him, *and you are at all times to weigh what he says in connection with that circumstance as going to his credibility*, and having done so, you give to his testimony such weight as you may think it entitled to under all the circumstances." R., p. 175.

"If there is a conflict, as I think there is;

"If *the conflict is irreconcilable*,"

It would seem the verdict should have been not guilty.

"If the conflict is irreconcilable," we would surely submit the presumption of innocence was not overturned. Guilt beyond a reasonable doubt was not shown.

"If the court expresses a view, if it does express any,

"Now, there is a direct conflict R. p. 176.

"Now then, in such a conflict

"it would be a strong circumstance against Mr. Humes R., p. 177.

"It is contradictory to what he now states before the jury on the stand, and it is inconsistent with the transaction as he now details it, *and is inconsistent with his innocence, as it is now maintained.*"

"Is it possible for language to emphasize more strongly the trial judge's view in fixing with the jury guilt on defendant? In this single sentence, in this long charge of nearly all the same thing, he repeats it three times. Puts it in three different ways in one sentence to emphasize it.

"It is contradictory to what he now states before the jury on the stand, it is inconsistent with the transaction as he now details it, *and is inconsistent with his innocence, as it is now maintained.*"

"Now, did they understand Finley, and did Finley understand them in that conversation?"

This is just given to show how carelessly in all things this charge was talked of. The defendant, Humes, was meant here But this helps to show that while some times the wrong law is talked of in the charge, so also often the wrong person's name is called when the court is talking of some one else.

See next how he urges it more, and states it in even stronger words if that was possible, in seeming to fix with the jury his view of guilt.

See how he argues and reasons his view of it to the jury in the effort to fix with them that view.

"It is impossible that what he said then could be true, and that what he now says could be true, and it is impossible, in view of the facts now before you, that a statement of that sort could be true and he could be inno-

cent, because if he paid him $50 he don't pretend that he otherwise paid him the pension money, *and it would warrant you in the inference that he witthheld the remainder of it.*"

Here in plain words he tells the jury three times that what defendant testified to could not be true. He tells them three times that it is *impossible that what he testifies to could be true;*

"*it is impossible that what he said could be true*"

"*and that what he now says could be true;*"

"*and it is impossible, in view of the facts now before you, that a statement of that sort could be true and he could be innocent,*"

"because if he paid him $50 he don't pretend that he otherwise paid him the pension money."

And now he is bent in fixing guilt on the defendant in what he says to the jury, and he states it:

"and that would warrant you in the inference that he withheld the remainder of it."

After then he says:

"that is a strong circumstance in this case."

"That is a question for you to say, if you can."

Was a trial judge ever before anywhere heard to tell a jury trying a person for his liberty, "That is a question for you to say, if you can." To throw so much doubt on a fact they were to find as it seems purposely and in effect to tell the jury "if you can." In short, that you can't find how it is.

And if it was involved in so much doubt, such grave doubt, then it was surely the duty of this trial judge to have told this jury that being involved, as he says, in such doubt, therefore it could not overturn the presumption of innocence in favor of the accused.

It did not establish his guilt beyond a reasonable doubt and their verdict should be not guilty.

"Finley," then the trial judge says.

Juryman: "You had reference to Mr. Humes, didn't you? You said Finley."

The court: "Yes, sir."

Even a juryman had to try to keep the judge right about the names of the persons he was speaking of.

Then he says:

"And the subsequent statute, the one under which this pension is issued, prohibits a notary from charging the 50 cents, and requires that he should perform that service for nothing."—R., p. 178.

This just shows how confusedly, to say the least of it, was the trial court informed as to what the different acts really were.

The act of June 27, 1890, does not contain any such provision.

The acts of 1888 and 1889, appropriating the money to pay the pensions of those two years, provide that any United States officer should, without any charge, let persons execute the vouchers under those acts, but not further or otherwise.

But this statement in the charge just shows to what extent this persecution was carried. That was the insistence of the District Attorney in this case to the court and jury, namely, that the defendant should be found guilty under a charge of wrongfully withholding pension money under such statute, whether he was agent, attorney or any other person instrumental in prosecuting these claims for pension before the Pension Office, even if he did nothing except collect the notary 50c fee.

And to show how far such improper matters were pushed, seeking to prejudice the case and the jury against defendant, R., p. 134, shows that other such charges as these had been made in just such a way and grounds; and that the District Attorney, as we submit, wrongfully used this fact to prejudice the jury and the case against the defendant.

Then he says:

"And if what Sanderlin says is true, if Mr. Humes had made the statement to Finley and Laughlin, which they say he did, it would not have been a true statement; so that there is on that point a *hopeless conflict in the evidence—in its terms and its implications*, and you have got that to deal with."—R., p. 178.

"*A hopeless conflict!*" If this be so, the presumption of innocence was not overturned by proof showing guilt beyond a reasonable doubt.

And he adds "in its terms and *implications*."

XI. ASSIGNMENT OF ERROR.

It is nowhere mentioned in the charge that the bank book, with the entry made of the date of the payment of the check, if free from suspicion, would be very strong evidence tending to show that the check was actually paid on October 8, 1894. It is submitted that this important documentary evidence should have been called to the attention of the jury, with proper instructions in regard thereto. R., p. 199.

This assignment is sustained by what is said by this court in the case just cited of Allison: "Justice and the law demand that so far as reference was made to the evidence, that which was favorable to the accused should not be excluded. . . . and great caution should have been used not to complicate and confuse the issue. But the charge ignored . . . the evidence tending to show what defendant's proof was; and invited the jury to contemplate the spectacle unrelieved by allusion to defensive matter, *which threw a different light on the transaction.*"

And there is much more of this well reasoned opinion that we feel sure is just exactly in line with the objections we here make to the charge in the case at bar, and which we refrain from quoting again to avoid needless repetition. But we surely beg its full consideration and application to the case at bar, as being the same errors

committed by the judge in each case, and the rules of law governing being identically the same.

Again, in the Hickory case, where a statement is spoken of in the Starr case in approving the language in the Penn case, this court quotes: "When there is sufficient evidence upon a given point to go to a jury, it is the duty of the judge to submit it calmly and impartially."

And that great care should be exercised that the charge given should not mislead, and *especially that it should not be one-sided.*

"The charge given in this case violates every rule thus announced. It was neither calm nor was it impartial. *It put every deduction which could be drawn against the accused from the proof . . . and omitted or obscured the converse aspect.* In so doing it *deprived the jury of the light requisite to safely use these facts as means to the ascertainment of truth.*" And without further extensive comment we earnestly submit that these authorities demonstrate the correctness of the position taken and that this assignment is well taken and should be sustained.

XII. ASSIGNMENT OF ERROR.

Throughout his charge his honor refers to the serious conflict of evidence, and in one part of the charge refers to the conflict in the most vital part of the contention as hopeless. Such a state of the evidence, it is submitted, should have worked the acquittal of the defendant, assuming the view taken by his honor in his charge to the jury to be correct, and the jury erred, therefore, in not acquitting. R., p. 199.

If the conflict was, as he says, hopeless, then defendant's guilt was not established beyond a reasonable doubt.

The witness of the law the presumption of innocence had not been overturned, and the verdict should have been not guilty.

The I. and IV. assignments of error are presented and argued together.

I.

Error in failing to instruct that if the jury believed from the evidence the check was not paid to Anderson on October 8, but to some other negro, that this would not justify a conviction of the defendant unless the evidence satisfied the jury beyond a reasonable doubt that the money, either directly or indirectly, through the hands of such other negro, reached the defendant, who wrongfully withheld $486.40 thereof, paying to Anderson, October 29, 1894, or some other day after October 8, 1894, only $50, and wrongfully withholding the entire balance. The defendant was entitled to such instruction, applying the law to this particular and important aspect of the case, and especially so in view of the ground assigned as error under the III. head. R., p. 196.

IV.

The following portion of the charge contains error: "The Government's contention is that in fact Humes took that check there on October 8 himself and procured it to be cashed, and that the younger Humes has no recollection of it at all, except such as he has, in the interest of his brother, actually led himself to believe since; and that on October 29, that he kept that money till that time and then paid Anderson $50, Anderson says, and in respect to which he is corroborated by Finley and Laughlin and by the elder Finley, so far as the date his cow was paid for is concerned."

The tendency of this instruction, it is submitted, was to produce the impression on the minds of the jury that there was some evidence in the case showing that the defendant took the check in person to the bank October 8, 1894, and on that day received from the cashier the amount of the check. In support of this view there is not a particle of evidence. Mr. Humes did not go in

person to the bank. The check was paid to Anderson or some other negro. This under the proof is beyond doubt.

Anderson (c) (R., p. 18–37) P. Finley (R., p. 37–46) Laughlin (R., p. 46–50) and A. Finley (R., p. 50–54) are the only witnesses of the Government as to the Anderson matter.

Not one of them pretend to say that the defendant went to the bank himself in person and cashed the Anderson check.

The defendant testified (R., p. 116) he delivered to Anderson his check and had Sanderlin show Anderson to the Mechanics Savings Bank, corner Main and Madison streets.

The defendant testified that he did not present the check of Anderson to be cashed. R., p. 121.

Franklin (c) testified that he saw Anderson on October 8, '94, go out of Mr. Humes' office with his check in his hand, with Sanderlin going to the bank. R., p. 138–44.

Sanderlin (c) testified: "Mr. L. W. Humes give Anderson his check and I went with Anderson and showed him the bank and saw Mr. Young Humes pay Anderson the money on his check. I identified him at the bank." R., p. 152–153, 157.

W. Y. C. Humes testified: "I as cashier of the Mechanics Savings Bank, and as the bank books show, on October 8, '94, paid William Anderson, colored, the money on his check. Sanderlin was with him. R., p. 160–1–2.

"I did not pay this check to a white man.

"I did not pay it to Sanderlin.

"I paid it to William Anderson. I saw Anderson in this court room last week and I recognized him as the man *I paid the check to on October 8, '94*. He said his name was William Anderson and Sanderlin identified him. The amount of the check was $536.40. I paid it all to William Anderson, except the cost of exchange.

The check is No. 743,149, dated Knoxville, Tenn., October 3, '94, drawn by D. A. Carpenter, U. S. Pension Agent, to order of William Anderson, on the Assistant Treasurer U. S. at New York. It was endorsed by William Anderson, his mark witnessed by L. W. Humes and G. H. Percell. Entered on bank cash book and collection register and sent to the National City Bank, N. Y.

In Hicks v. U. S., 150, U. S., 452, this court by Mr. Justice Shiras say: "The logical inference was this . . . and another and inconsistent inference could not be arbitrarily substituted" by the trial court.

In the case at bar no inference was substituted which in the Hicks case was said was inconsistent and could not be arbitrarily substituted, but a theory was stated by the trial court upon which there was in the case not a scintilla of proof to base it on, and which was in the very teeth of all the proof on the question in the case.

In disposing of the IV. assignment of error on motion for a new trial the court says: "I think it was proper to direct the minds of the jury to the contention,"

Whether there were any facts in the record to base the contention on or not, as there was not shown by the proof hertofore cited and quoted.

He says further, "I think it was full in this respect."

This is true. It was very full in this respect. Full to overflowing. It stated a contention by the trial judge for the Government upon which there were no facts in the record to base it.

He says: "And fair to the defendant."

Certainly it was fair to the defendant, on the same idea of the man who said equity was a perversion of justice.

VIII. ASSIGNMENT OF ERROR.

In calling attention to the circumstances that might lessen the credit to be given to the witnesses of the defendant, it is submitted that a similar instruction

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should have been given in regard to the testimony of Laughlin and Finley, but, instead of doing so, his honor instructed in regard to them as follows: "Now, you have got that conflict to deal with. What interest did Finley and Laughlin have to testify anything but what they understood to be the truth, and did they correctly understand it?" It is submitted that, inasmuch as relationship and employment are mentioned as circumstances tending to weaken the testimony of defendant's witnesses, the jury should have been instructed that if Laughlin was the counsel of Anderson, and Finley, his landlord and self-constituted protector, undertaking to look after his interests, that this would be a circumstance which might be looked to in weighing their evidence, and especially as immediately after what his honor says in respect to Finley and Laughlin, the jury are told that they may look to the fact that Sanderlin was in the employ, to an extent, at least, of Humes. R., p. 178–9.

Then he says, "That manifest conflict."

The trial court made no comment to the jury on P. Finley's being Anderson's self-constituted protector, or Laughlin his paid attorney; or that P. and A. Finley were father and son.

Everything as shown in the charge was said by the trial court to discredit defendant's witnesses. And everything to sustain those of the Government.

The trial court discredited the defendant in his charge to the jury in every way that words would do so in intimations and insinuations.

Discredited Franklin and Sanderlin because they were in the employ of the defendant.

Discrediting W. Y. C. Humes because he was defendant's brother. And L. C. Humes because he was his son. Although the District Attorney did not ask L. C. Humes a word on cross-examination.

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V. ASSIGNMENT OF ERROR.

It is respectfully submitted that defendant's case may have been prejudiced by the following instruction: "Among other things, you may consider for what it is worth, the fact, as the case comes to you, that Mr. Humes, so far as it is developed, was doing or attempting to do this work for nothing but the notary's fee, as a question affecting his testimony." It is true, after the jury had been considering of their verdict for some time, his honor withdrew this instruction, and his purpose was to do so in such a way as would leave no effect whatever upon the minds of the jury. This is always difficult, but almost impossible in this case, where the charge is in substance the fraudulent withholding of the money of the pensioner, and the circumstances referred to tend to disparage the business and stain the reputation of the defendant. The tendency was to lower and depreciate. Withdrawing, no matter how fully done, it is submitted, could not remove the effect already produced.

And this serves, it may be better than anything else in the record, to show how deep-seated was the prejudice on this trial against the defendant, that it almost, if not quite, spread itself to the trial judge. Here is where he admits he made an error against the defendant. And how strange an error it is, too. Because he had found for the jury that the defendant was instrumental in prosecuting these claims for pension in such sense that he was guilty if he withheld any part of the money and was within the provisions of the statutes.

The defendant's contention all along had been that he never was agent, attorney, or any other person instrumental in prosecuting these claims for pension before the Pension Office, but that all he ever had done, and the only and sole connection that he ever had had with these pensioners or their claims, was that in his purely official and ministerial capacity as United States Com-

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missioner he had administered to them the oaths to the vouchers, and so certified under his official seal, and had never received one cent from them except the usual notary's fee—50 cents for each paper.

Now, considering that this is made out by the proof to the satisfaction of the jury, the trial court charges the jury that Mr. Humes, so far as it is developed, was doing this work for nothing but the notary's fee, as a question affecting his testimony.

In other words, if the defendant had made out to the satisfaction of the jury his theory of this case, namely, that he was only acting in any manner connected with these pensioners or their claims in his official capacity as United States Commissioner, and got nothing for it but the usual notary's fee—50 cents; then the trial court charges the jury that they must consider this as a question affecting his testimony.

In other words, if he has made out his case upon this line of defense, they must take this fact to discredit the truthfulness of his statement by. If he was not guilty, because the trial judge told them that as a fact he was instrumental in prosecuting these claims for pension before the Pension Office of these parties, and if he has satisfied the jury that he only acted as notary in swearing them to their papers and so certifying under his official seal and only got the notary's fee, then this charge tells them he is guilty anyhow, and you find him so, whether he is under the statute under which he is indicted or not, because if he has proven a perfect defense you must discredit him by that.

If he has made out his case—made out a perfect defense—proved to your entire satisfaction *his innocence of this charge and that he is not guilty*, then I charge you, says this trial court, that you must take that as discrediting his statement.

In the history of the world did you ever hear it said before that if a man made out a perfect defense to a

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charge, that a jury must take that making out of a perfect defense by the accused to discredit him by?

In short, don't believe him anyway, or anything he says.

If he has told the truth, don't believe him anyway, discredit him for and by his telling the truth.

In disposing of the V. assignment of error, on motion for a new trial by the trial court, of course the trial court did not think it was error to have left the instruction as given, as he says. To discredit the defendant because he had proven the truth of his contention on this point, why, of course, the trial court did not think this was error.

It was withdrawn, so it could not have possibly hurt the defendant—the trial court says (R., p. 15). It was not its withdrawal that hurt, it was giving it in charge. That is the error well complained of.

IX. ASSIGNMENT OF ERROR.

The tendency of the following, which was repeated in the instruction in regard to Bloodson whether so intended or not, probably injured the plaintiff in error's case in the estimation of the jury, viz: "Another circumstance is, if Humes started out to swindle Anderson out of his pension, you may consider the fact that according to what Andersan says, out of $536.40 Humes took all of it except $50. It is not a case where he undertook to take some of it—a small part—but he took all of it except $50."—R., p. 199.

"So that, as the case is testified to by these old colored men, Mr. Humes took all of Anderson's money except $50—took out of $536.40—and of Bloodson's $567.20, took all that but $50, and took half of Haynes'."—R., p. 180.

"If Humes started out to swindle Anderson," the trial court tells the jury in the charge. And then repeats it as to all three.

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To tell a trial jury that if a man started out to swindle another or three other men, the trial court says, in disposing on motion for a new trial of this objection to his charge, that it was intended to be for the benefit of the plaintiff in error.

Telling a trial jury that a man started out to swindle three other men was intended to be of benefit to the man that was doing the swindling is strange beyond comprehension.

The trial judge told the jury that if the plaintiff in error started out to swindle Anderson and out of $536.40, Humes took all of it except $50, and of Bloodson's $567.20, took all of that but $50, and took half of Haynes', and then we are told this was intended for the benefit of the plaintiff in error. If this was for the benefit of the plaintiff in error we wish we knew what the trial court thought he could say that would be of detriment to the plaintiff in error.

This objection, the trial court says, covers a portion of the charge distinctly intended to be in the interest of the plaintiff in error.

How such words, as if Humes started out to swindle Anderson he took all of Anderson's except $50 out of $536.40, it is not a case where he undertook to take some of it, a small part, but he took all of it except $50, and of Bloodson's $567.20 took all of that but $50, and took half of Haynes's; how such words as these could be in the interest of plaintiff in error we are unable to see.

The trial court says further:

The fact that an intelligent man as the plaintiff in error is undertaking to cheat these ignorant old pensioners, would have been so bold and defiant as to have taken and appropriated to himself not merely a part, but almost the whole of all that was coming to them, was a circumstance that rendered the transaction somewhat unreasonable."

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We agree to this, that the facts here stated rendered the transaction most unreasonable.

And we surely submit that this being so, it was the duty of the trial court, in simple justice to the plaintiff in error, to have, in some words from which some such idea, intimation or inference could have been drawn, said so in charge to the jury.

And it is surely reversable error to, in words, call plaintiff in error, in the charge to the jury, a swindler, and say he started out to swindle three men and took all each had, of the two of them over $500, except $50 each, and half of the other's. To denounce defendant as a swindler to the jury trying him.

The trial judge says further:

"And the attention of the jury was directed to this as a circumstance in plaintiff in error's favor, and to that extent against the reasonableness of the testimony of the pensioners."

But how calling a man on trial accused of a crime a swindler, and saying that he started out to swindle three men and took all of the money of two of them—over $500, except $50 from each, and half from the other, can be said to be directing the attention of the jury to it as a circumstance in plaintiff in error's favor, and to that extent against the reasonableness of the testimony of the pensioners, is beyond our comprehension.

That such a meaning could be wrung from the words of the charge we submit is impossible. No such meaning could ever have been dreamed or thought of, or interpretation could have been given, the words of this charge, unless the trial court had have said that was what he meant. And if this was his meaning he surely never said what he meant or meant what he said.

And we feel sure what he did say misled the jury; never gave them any idea such as he says he meant in his overruling this objection on the motion for the new trial.

He says further:

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"As the instruction does not misstate the facts and *suggests no inference from it*, except such as would be in plaintiff in error's favor, as it was designed to be." R., p. 16.

What a strange idea this is, that no inference was in the charge that called a man a swindler to a jury, and to say that he started out to swindle three men and took all their money—over $500, from each of two of them; all except $50 from each of two of them, and half of the other's—not a case where he undertook to take some—a small part—but he took all, except $50 from two and half from the other—that to say this in a charge to a jury trying a man for his liberty suggests no inference except such as would be in his favor, as it was designed to be, we can but say is past our understanding or finding out.

If the trial court had have given in his charge to the jury the explanation of it which he does in what he says in disposing of it as an objection to the charge on motion for a new trial, it would have made it a very different thing.

Indeed, we submit that what he there says is a confession or admission that what he said to the jury was error.

There is just the same difference between the two that there is between the Egyptian darkness of midnight and the broad sunlight of mid day.

And so, even in disposing of the motion for a new trial, you still find this trial judge using on one hand words of condemnation of plaintiff in error "undertaking to cheat," and on the other word of sympathy, "these ignorant old pensioners."

He says, "and to that extent against the reasonableness of the testimony of the pensioners."

The charge is here for this court to inspect and if in its ten long, closely printed pages there is one letter, one word, one single intimation, inference or insinuation "to

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that extent against the reasonableness of the testimony of the pensioners" we fail to find it.

On the other hand from the beginning to the end you find everything as was in this item of the charge that could be thought of, said, done, intimated, insinuated and inferred against plaintiff in error, his case and witnesses, and everything for these people against him.

VI ASSIGNMENT OF ERROR.

The tendency of the following instruction, it is submitted, was to prejudice the cause of the plaintiff in error: "Now, I have undertaken, somewhat tediously, to direct your attention to this conflict over the Anderson transaction, because most of the proof in the case is in regard to that, and *the most extensive conflict* is in regard to that and the testimony on behalf of the Government, particularly in corroboration of Finley and Laughlin, makes the case against Humes in regard to that transaction stronger than it is in regard to the other," in this particular part of the instruction, which was calculated to give undue prominence to the testimony of Finley and Laughlin. R. p. 198.

Then the trial judge says,

"And if you should convict the plaintiff in error Humes, on the Anderson transaction—"

And the irresistible inference, intimation and insinuation as conveyed to the jury by these words of the trial court is, that you will,

"It would not necessarily follow,"—he says.

The intimation is strong that it would follow in these words, but the trial judge is condescending enough to say,

"*It would not necessarily follow* that you would convict him on the third and seventh counts in regard to Bloodson and Haynes transactions."

The very strongest intimation in these words *is that it would most likely* follow, but the trial judge condescends

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sufficiently to say "*it wouldn't necessarily do so*"; not *ex necesitati*.

"Nothing would follow one way nor the other about that, because the fact that a man is guilty of a crime in respect to one transaction,"

And words could not make the inference and intimation of the trial judge stronger that the plaintiff in error was,

"Is not a ground on which you would convict him on another."

It might in all probability be, is the strong intimation and import of the words; but it would not be absolutely so, he says in effect.

The trial court then gives the final clause to his charge, as if to seal, as he did with the jury, the doom of the plaintiff in error. No stone was left unturned to fix his fate with the jury and to prejudice it all that could be done against him, and then the trial court says, (R., p. 181):

"Now, this pension law, under which the plaintiff in error is indicted, is a provision intended to protect. It is a new phase of the old problem in legislation of protecting the weak against the strong, and was designed, among other things, *to protect ignorant pensioners against all impositions* by men who undertake to be instrumental in the prosecution of their claim and then withheld from them what was due to them *and converted it to their use.* He says this pension law, under which the plaintiff in error is indicted, is a provision intended to protect.

A new phase of the old problem in legislation of protecting the weak—these pension people, is the plain import of these words—*against the strong—this plaintiff in error, is the intimation of those words, too clear to be mistaken.*

But if these words have not made the imputation and insinuation of wrong by plaintiff in error towards these pensioners plain enough, then the trial court has

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fixed in what he next says too plain for there to be any longer or further doubt or mistake about it.

And he says—"*designed to protect ignorant pensioners.*"

He has told the jury before that as a fact plaintiff in error was instrumental in prosecuting these claims for pension before the Pension Office.

And now he says, "designed *to protect ignorant pensioners against all impositions by,*"

The weak, he said; and now he says *ignorant, helpless, to-be-pitied and feel-sorry-for pensioners,* was the idea conveyed, and intended to be conveyed, to the jury, on the one hand *in favor of these pensioners* and *on the other against the plaintiff in error.*

"*All impositions by*"—every word and phrase that could be thought of *to cast imputations and insinuations upon plaintiff in error was used as shown all through the charge by this trial court.*

"*Designed among other things*"—we are surprised that the trial court put this expression in so mild a form; among other things—his usual way of stating it would have been "designed for the sole purpose."

"*Designed to protect ignorant pensioners against all impositions*" *by men like this plaintiff in error is the undoubted insinuation and imputation, who undertake to be instrumental in the prosecution of these claims, as he had charged before to the jury the plaintiff in error was, and withheld—in fact "withheld from them what was due to them and converted it to their use as the plaintiff in error has in fact withheld and converted to his own use these moneys from these people in this case," is the irresistable import of these words of the charge to the jury by this trial court.*

VII. ASSIGNMENT OF ERROR.

It is respectfully submitted that his honor may have misled, and probably did mislead, the jury in the emphasis which he laid upon the testimony of Finley and Laughlin and in what he said in regard thereto, and

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which was repeated three several times. This, taken in connection with what was said in regard to the same testimony at the close of his honor's review of the testimony, tended to give the testimony of Finley and Laughlin undue prominence. R., p. 198.

In disposing of the sixth and seventh assignment of errors, the trial court on motion for new trial says, No. That undue prominence was given in isolated sentences or clauses because it was not in them all was the trial court's idea of doing no harm to plaintiff in error in the charge to the jury.

Because the trial court, in commenting on the testimony, gives undue prominence to the evidence of the Government, without summing up all the testimony, as well for as against the plaintiff in error.

Because the court, a second time in the charge, in going over the facts against defendant gives undue prominence to those facts, and gives them in a way that have the effect of an argument against defendant, and are not a proper full summing up of the facts.

Because the court bears upon and gives undue prominence to the facts against defendant. These three statements of this error are taken from and in the words in the Hicks case *supra*, and are the same in the case at bar, we submit. As also the Allison case. Both cited before, under assignment herein No. II. and settle we submit this question as well.

After finding for the jury the primary question of fact and so charging them and all through his long ten-page printed charge, giving undue prominence to the evidence against defendant and speaking in the most derogatory terms and slighting way he could think of, of defendant and all his witnesses, and saying everything he could think of in the most favorable way of all the witnesses of the Government, and in effect charging the jury to find defendant guilty, it is not to be wondered at that they so reported on two counts out of nine.

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X. ASSIGNMENT.

The following portion of the charge contains error, viz.: "*Now, of course, it is a minor matter*, but in considering this testimony you can take into account also the intelligence of the witnesses and their reliability as a medium for correctly understanding and correctly communicating facts so known to such witness." The error consists in stating *that the intelligence of the witnesses and their reliability is a minor matter.* R., p. 199.

In disposing of this on the motion for a new trial the court says: "This objection to the charge is again to a part of the instructions in the interest of defendant. It is not to be doubted that the jury properly understood that the court meant for them in considering the testimony of the pensioners who were witnesses to *look to the fact that they were ignorant*, and that their powers to correctly understand or communicate facts was somewhat limited, and *that this was a minor matter was hardly to be doubted.* R., p. 16.

The court says what he stated in the charge was intended for the benefit of defendant. And we submit that what he does say in disposing of the objection to it, just the opposite effect would be produced upon the mind of any person from what the words of the charge produced.

Just the directly opposite meaning is expressed in the two statements.

How any one can think they mean the same we fail to see.

How the words of the charge could be intended for the benefit of defendant is beyond our comprehension. To say the intelligence and reliability of witnesses who were seeking to swear away the liberty of a man *was a minor matter*, and that such words were intended for the

benefit of the person whose liberty was thus undertaken to be sworn away by these people, is just beyond our comprehension.

He says it is not to be doubted that the jury properly understood that the court meant for them, in considering testimony of pensioners who were witnesses, to look to the fact that they were ignorant, and that their powers to correctly understand or communicate facts was somewhat limited. How any one could understand from the words of the charge that the court *meant for them to look to the fact of the ignorance of the pensioner witnesses*, and that their powers to correctly understand or communicate facts was somewhat limited, we can't see.

But if such a meaning could be wrung from the words, he destroyed it by starting out with saying, "*Now, of course, it is a minor matter.*"

He still holds to it, "and *that this was a minor matter was hardly to be doubted.*"

This is not correct rule of law at all. Intelligence and reliability are not minor matters at all. They are the very first requisites and essentials of a witness. Is he intelligent? Is he reliable? If so, it gives great weight to his evidence. It is no *of course minor matter at all*. It is matter of very greatest importance. And the court erred in stating the rule of law in any such way as he did.

If they are densely ignorant, and their powers to correctly understand and communicate facts is somewhat limited, then that should properly go to the weight and credibility to be given their evidence.

If they are so densely ignorant that they don't know their ages; don't know the streets of the city; could not count; don't know one paper from another; don't know when they swear to vouchers; don't know when he made his mark to his checks.

It looks like reason and common justice would dictate that this, in some degree, *and in a very great degree*,

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would go to their weight and the credibility to be given their evidence.

And this court keeps on injecting strange reasons for what he says, "because the facts about which they were testifying were of easy comprehension."

If the facts about which they were testifying were of easy comprehension, so much the worse for the person who could not even understand those simple facts.

Usually a child eight or ten years old knows the names of the streets of the city he lives in. This is common experience. Here these men had lived there over thirty years and did not know the name of a single street in the city. Usually a child of eight or ten years of age can count money. Here these men, past sixty, couldn't. Couldn't tell the days of the weeks, or months, or years, or dates. Say they couldn't keep count of the most recent days and dates of the very daily occurrences. Can't read or write.

And can it be possible that we are told in a court of justice, to a jury, that they must put a premium upon the ignorance and want of reliability of witnesses; and that this is a true rule of law?

The court then ends his answer to this objection by saying "their liability to be mistaken or misunderstand the facts was very slight."

Now, of course, it is a minor matter—the intelligence and reliability of witnesses, he said—in short, their great lack of intelligence and reliability is a minor matter, but he feels that he has not said enough to fully satisfy every person about this, and so he adds that while this great lack of intelligence and reliability *is of course a minor matter*, yet their liability to be mistaken or misunderstand the facts was very slight. In short, these witnesses are very ignorant and not reliable, and *he tells the jury, "but of course this is a minor matter."*

And now, to make sure of it, he says while it is true that they are *densely ignorant and not reliable, their liabil-*

ity to be mistaken or misunderstand is very slight. They are very ignorant and not reliable, can't read or write, don't know the names of the streets of the city where they have lived over thirty years. Swore they could count money, and couldn't when it was handed to them on the witness stand before this jury. But then, after all this, he says their liability to be mistaken or misunderstand was very slight.

If a man was born dumb, and stone blind in both eyes and deaf as a post in both ears, could his liability be any greater to be mistaken or misunderstand than these witnesses show they were in all things, and however, very slight?

The next item in the charge to which we invite the court's attention, is another place where the court seemed to feel that it was necessary for him to enter upon another argument for the protection and benefit of the witnesses for the prosecution. That he has said their intelligence and reliability was of course a minor matter was not sufficient; he must add some more, so that the jury will be governed by it.

We may say that hardly a single one of these witnesses agreed as to the date, day or month in a single statement they make.

In the Anderson matter we may say not a one. For after all this long talk that you see in the charge about the corroboration of Finley and Laughlin, when you turn to Laughlin's evidence you will see he swears he don't know the date, day, week or month. And yet you will find this charge full to over-flowing of the oft repeated statements of the corroboration of Finley and Laughlin. It is the truth you find it in the charge. You hear the court call it time and time again, all through his charge, the corroboration of Finley and Laughlin. But it is no where else in the record, except in the charge. The truth is, just exactly the opposite are the facts as shown in the record and sworn to by Laughlin. You

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still have his unqualified statement that he did not know the date, day, week or month.

This, just like all the rest of it in this record, is just a mountain made out of a mole-hill, without any foundadation in fact or law by the court in the charge. Strange misconception that is simply beyond our comprehension.

And so, when you look to the evidence of all these government witnesses, spoken of again in this brief beyond more fully in detail, you will find they never agreed as to a single date and knew nothing of the dates at all, and contradicted themselves and each other as to them all.

The court saw this, and saw the inevitable result that would naturally have followed in the usual course of things would have been that it would surely have worked the acquittal of defendant, and it must be explained to the jury so they will be right about it, according to his view. He must give the best excuse for it he can think of, and here is his explanation :

"Discrepancies between witnesses as to time, growing out of the frailty of human memory, is ordinarily not a circumstance that affects the testimony of or discredits a witness. It is too common an experience that memory fails as to dates, time and distance, and it is only when the jury believe that a date has been deliberately fixed upon and adhered to with a view to pervert the fact that that would be a circumstance that discredited a witness' testimony." R., p. 175.

" Discrepancies between witnesses as to time."

Oh ! why. The court says in fact there are discrepancies between witnesses.

Now, he must excuse them, "growing out of frailty of human memory," he tells the jury in his charge.

On one hand you have witnesses for defense. And all of them but one can read and write. They are all intelligent, educated persons. The one that can't read or write is far above the average in intelligence ; knows all streets, can count, knows one paper from another, knows

a voucher, a pension certificate and a check ; knows when he makes his mark and swears to a voucher, or puts his mark on a check ; knows dates, days, weeks, months and years.

All of defendant's witnesses are only testifying to dates and amounts fixed by written vouchers, checks and bank books. *No frailty of human memory in this.*

Now, how strange must have been, and how strongly must such contrast strike the unbiased and intelligent mind of any man.

On one hand, for the prosecution you find illiterate, uneducated persons, who can't read or write ; can't count, don't know dates, days, weeks, months or years ; contradict themselves and each other on every statement ; don't know one paper from another ; deny their own sworn statements to the vouchers under seal of officer ; have no written statements showing any date or amount they claim. Finley, of course, swore to a date, but, as pointed out beyond in his evidence, he contradicts himself flatly even as to this, although as we submit it was shown it was a made up story. And Laughlin did not corroborate Finley. Laughlin swears he don't know date, day, week or month. Laughlin not only does not corroborate Finley, but, as shown beyond, on several vital points Laughlin flatly contradicts Finley.

On the other hand, defendant and his witnesses were intelligent and well educated, and were testifying only to written dates and amounts as shown by vouchers, checks and bank books.

With such a contrast as this between the kind of witnesses for the prosecution and defense to deal with and get rid of—get out of the way—are you at all surprised that the court who took the view and bent of a conviction would, in explanation, excuse and to wipe this away say that the *intelligence and reliability of witnesses was of course a minor matter ?* It was bound to have been a minor matter of course, and to be considered by the

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court and the jury in a case like this to get—to secure—a verdict of guilty.

"Discrepancies between witnesses growing out of the frailty of human memory," he says in excuse for the witnesses of the prosecution.

Why did he not tell this jury that the discrepancies between these witnesses for the prosecution growing out of other things than the frailty of human memory should be considered by the jury?

Why did he not tell this jury to properly make such a contrast also, on the other hand that as to defendant and his witnesses there were no discrepancies in their testimony. *That no frailty of human memory entered their evidence. That they testified only by and from the written dates and amounts as shown by the records and the writing thereon of their own signatures?*

The court truly says it was from the frailty of human memory from which the witnesses of the prosecution were testifying.

There was no frailty of human memory in it from which the witnesses of the defense were testifying. They were testifying by and from the solemn written records themselves. These written evidences of the dates and amounts fixed at the taking place of the transactions could not be changed, could not be made to speak anything else but the truth.

"Discrepancies growing out of frailty of human memory."

Is it possible that such things as these can overturn the witness of the law in favor of the accused—the presumption of innocence; overturn it beyond a reasonable doubt; carry home such a degree of conviction as is short only of absolute certainty? Do discrepancies growing out of the frailty of human memory overturn proof—written evidences of the facts, not from the frailty of human memory at all, but solemn written unquestioned evidences of the facts?

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To say such as this would have been fair. This would have been just to both sides. This would have kept the charge from being one-sided. From part of what was in favor of defendant being *omitted or obscured.*

"It is not ordinarily circumstance that affects testimony or discredits a witness," he says.

How guarded the court is in trying to protect these prosecuting witnesses. Ordinarily he says it is not. And then he calls it, in the very slightest term he possibly can find, "a circumstance." Not a fact, as it really was, but only "a circumstance."

Why did he not frankly and openly tell the jury that ordinarily it was a fact that did affect the testimony of and discredit a witness as it does? This is the true rule of the law of evidence.

"*There are discrepancies between these witnesses as to time, but it don't affect the testimony or discredit a witness,*" he says.

But he must state the excuse a little more strongly, and so he says, "it is too common an experience that memory fails as to dates, time and distance." And now, having offered every excuse he could think of in favor of these pensioners and their witnesses, he winds it up "and it is only when the jury believe that a date has been deliberately fixed upon and adhered to with a view to pervert the fact that that would be a circumstance to discredit a witness' testimony."

How could the jury believe, in the face of all the court had said in this long charge, and on every occasion and opportunity, for the protection and benefit of these witnesses for the prosecution, that a date had been deliberately fixed and adhered to with a view to pervert the fact and would be a circumstance to discredit a witness?

Indeed, does not the court here say to the jury in the plainest possible words, "I tell you the discrepancies between these witnesses as to time grow out of the frailty of human memory, and is not only not a fact but not even a

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circumstance that affects the testimony of or discredits these witnesses! It is too common an experience that memory fails as to dates, time and distance, and I tell you the jury must not believe that a date has been deliberately fixed upon or adhered to with a view to pervert the fact, and that is not a circumstance that discredits these witnesses' testimony."

Here for often many, many times he passed again upon the weight, strength and credibility of the evidence. He usurped province of jury and found for them facts, and so fixed it in his charge that they could not have found them otherwise than he stated them.

On the other hand you will find that there could be no discrepancies between the witnesses for the defense. They testified only as to the dates written and fixed on the vouchers sworn to by these pensioners, and certified to under an officer's seal and witnessed by said witnesses, and the checks as to the written dates and amounts shown on them by the bank books showing amounts and dates of payment.

In this one-sided charge does the court say anything to the jury about these records; written facts in favor of defendant and his witness? Oh, no. All in his favor is left out of the charge. All to disparage him and his witnesses is said that could be thought of by the court. But, oh, no! anything in his favor is left out, omitted or obscured in this one-sided charge.

At the bottom of the page (R., p. 16) is found the first observation, as he calls it, of the court on the facts in disposing of the motion for a new trial. And we respectfully submit that the complete answer to it and the objection to it is, what has been so often said about so many of the things in the charge of the court in this case, and that is, that it has as its basis not a single fact as shown in the record.

And further, it is that defendant was tried and convicted on things that were not proved as facts as shown

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in the record, but upon outside observations that he had no opportunity to meet or controvert.

As to the second observation, the facts in the record, undisputed facts by both the witnesses of the prosecution and the defense, show that the conversation between Finley, Laughlin and defendant was a hurried casual conversation of a few moments, standing; as Laughlin, the prosecution's witness says, he called Humes from the front room into the back; that Humes was in the front room, in the press of much business with many other people; that none of the details of the matter were inquired into; that nothing was said about any check, or that that was all that was due Anderson, but that he (Laughlin) asked Humes a few questions about the matter; that after a few moments' hurried talk they left. And if this was not a proper explanation it would be hard to think what would be. If he would not believe this, when it was told to him by all the witnesses both for the prosecution and the defense, what could be said that would be believed? Taking our illustration or answer from the Sacred Book, if they would not believe this they would not believe though one rose from the dead.

The court's whole charge was an argument against defendant, and the jury so construed it and actedupon it.

As another strong fact in this case, showing defendant's contention was true, and that his conviction was had by the jury on the charge of the court, and not on the facts in the record, take the Haynes charge where the verdict was not guilty.

Haynes swore about the same as Anderson and Bloodson. His three so-called corroborating witnesses swore about the same and contradicted themselves and each other about the same. Harris, that cashier,

Defendant testified in substance the same as to all three—Haynes, Bloodson and Anderson.

Franklin testified the same as to all three—Haynes, Anderson and Bloodson.

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swore he might have paid the money of Haynes to defendant.

Indeed, defendant stated he personally went to that bank with Haynes and identified him.

In Anderson and Bloodson's claims it was proved by four or five other witnesses that defendant did not go with them to that bank, and that Anderson and Bloodson did go with another; and that cashier swore he paid Anderson and Bloodson; that he knew them both, and remembered it, and knew he paid them. Sanderlin swears that he went with them to that bank and saw them paid.

In fact the proof in Haynes' claim was stronger against defendant than it was in Anderson and Bloodson's.

And defendant's proof in Haynes claim was not as strong as it was in Anderson and Bloodson's.

But the comments in the charge by the court on Anderson and Bloodson was about ten printed pages, and on Haynes it was about seven lines out of that ten pages.

The proof in all, both for and against, was about same.

And if defendant was innocent in one he was innocent in all.

And if guilty in one he was guilty in all.

Haynes, Anderson and Bloodson and their witnesses swore about the same.

Defendant and his witnesses testified to the same in all.

The jury found that defendant and his witnesses' statements about the Haynes matter was the truth.

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And it is impossible to see how the jury found that the same statements by the same witnesses, defendant and his witnesses, as to Anderson and Bloodson, was not the truth also, except they did so according to the comments of the charge.

On the face of this record it is submitted to the court that defendant was not tried upon the proper position, that he was presumed to be innocent until the proof—first, the presumption of innocence—the witness of the law—in favor of the accused, together with any other proof he may introduce, and the proof against him should establish his guilt beyond a reasonable doubt—carry home conviction short only of absolute certainty; but the theory upon which he was tried, and the conviction had, was that he was guilty, and presumed to be so until he could prove his innocence even in the face of such a charge by the court against him.

Take the vouchers in the case at bar. Here is substantially a copy of them:

"Be it known that I, ——, do solemnly swear that I am the identical person named in pension certificate, in my possession, No. ——, dated ——, and whose name is inscribed on the rolls of the Knoxville agency, at the rate of $—— a month; that I have not been employed or paid in the army, navy or marine service of the United States from —— to the present time, and that my present post office address is ——." Signed by mark.

Witnesses as to mark.

"Subscribed and sworn to before me this —— day of ——, and I certify that the pensioner above named has this day exhibited to me his pension certificate, above described, and was fully identified as the pensioner named therein, and that he signed the following duplicate receipts in my presence."

This is signed by the officer administrating the oath in his official character, United States Commissioner, in

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the cases at bar, and sealed with his official seal. And the duplicate receipts were signed in the presence of the officer and witnessed by some other person. In Anderson and Bloodson's cases their marks were witnessed by Franklin.

Here Bloodson was allowed, upon his simple say so, to deny the oath he there made. And Anderson, so far as he would; but he swore he did execute the voucher to go to Knoxville before he got any money. And in this he agreed with the evidence of the accused and his witnesses.

And if so at all, this was a denial of former statements made by them on oath, in the presence of persons who testified that they saw them sworn to those papers.

To deny the certificate under official seal of the officer that they had so sworn.

Like the return of a sheriff or any other officer, will the littlest thing overturn his official certificate of the fact? We submit not. These vouchers, sworn to under seal of an officer and his certificate, like the return of the sheriff on process, was *prima facie* evidence of the truth of the statements therein contained. And the trial court should have so charged the jury.

And being the statements on oath of Bloodson and Anderson both, in regard to the same matter that they were then testifying in regard to, were in the nature of an estoppel, and worked an estoppel on them to deny it or swear to the contrary.

There is, we submit, an orderly and proper way for the trial court in summing up the evidence to state it. For example, after talking alone about the Anderson claim for over four printed pages then he states to the jury in a few words that he should have said that defendant's witness, Franklin, testified about Anderson matter and corroborated the statements of defendant and all his witnesses.

This is true. Franklin was one of the main wit-

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nesses for defendant. And when the court was summing up at such great length the evidence of the prosecution, and giving such undue prominence to it, and disparaging the evidence of defendant and all his witnesses, he also in the summing up even of what he did say of defendant's evidence, left out altogether all mention of one of his most important witnesses, and then gives it in a few disjointed words wholly disconnected with the Anderson matter and the evidence on the same. R., p. 180.

In the connection in which he gave it he broke the strength and force of it as evidence for defendant. And this was wrong. This was error. Prejudicial error to defendant. And reversable error. Certainly so when taken in connection with the very many other manifest errors as shown by the record, upon which we respectfully submit this case should be reversed and remanded for a new trial.

As before said, there is, we submit, an orderly way of summing up the evidence to the jury by the trial court. If the court was going to sum up the evidence of the Government, it should have taken it up and said here they have

Anderson (c.),
P. Finley,
A. Finley and
Laughlin

on one side, and made such summing up as was proper, and then said: On the other hand you have the evidence for defendant: the witness of the law—the presumption of innocence,

Defendant,
The pension certificates,
Vouchers,
Checks,
Franklin (c.),
Sanderlin (c.),
W. Y. C. Humes,

and the bank records and evidence.

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And made such summing
up as was proper.

Anderson (c) was the main witness for the Government on his claim.

It had also P. Finley, Laughlin and A. Finley, who it was claimed supported Anderson.

Anderson (c.) states he don't know how old he is.

That Humes gave him $50 in money in his office on Oct. 29, '94. That no one was with him —R., p. 28–9

Money in bills was given him, and he could not count it on the witness stand in this case.—R., p. 29. He states he can't tell one paper from another. That he signed a paper like this —R , p. 30. He can't read or write.

He states he signed a paper for the first quarter — R., p. 30

He took the money, he states, to P. Finley, a mile across the city, at the wagon yard.

He denies he went to the Mechanics' Savings Bank, corner Main and Madison streets, Memphis. Denies Sanderlin went with him, or that he knows Sanderlin, although Sanderlin was a soldier during the war with Anderson in the same regiment.

Denies Sanderlin identified him to the cashier of the bank.

Denies that the bank cashier paid him on Oct 8, '94, $536 on that check, or that he ever saw the check —R., p. 30.

He states he signed more than one voucher to draw money on.—R., p. 32.

He says he made out his voucher at Humes's office until after Nov. 4, '95.—R., p. 33.

He took the money, $50 he says, and said nothing to Humes.—R., p. 34.

Although Humes told him he would get $300 or $400.

Humes told him he would get right smart money when he began to draw. R., p. 36.

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P. Finley (R., p. 39) says he did not go to Humes' office with Anderson when he claims to have gotten the $50. R., p. 38.

The prosecution in this case is based for its proof upon what was attempted to be proven by three witnesses as a statement made by defendant to them. To Anderson when he was alone. To the other two when they were together. It is a statement claimed to have been made to them by defendant. And it is undertaken to prove that statement in the nature of an oral admission as having been made to them by the accused in a conversation had with them. We find the law on this point as follows, (Commonwealth v. Knapp, 9 Pick., 507, by Putnam, J.): "In a somewhat extended experience of jury trials *we have been compelled to the conclusion that the most unreliable of all evidence is that of the oral admissions of the party.* . . . . . .

"It is not uncommon for *different witnesses of the same conversation to give precisely opposite accounts of it; and in some instances it will appear that the witness deposes to the statements of one party as coming from the other, and it is not very uncommon to find witnesses of the very best intentions repeating the declarations of the party in his own favor as the fullest admissions of the utter falsity of his claim.*

"*When we reflect upon the inaccuracy of many witnesses, in their original comprehension of a conversation, their extreme liability to mingle subsequent facts and occurrences with the original transactions, and the impossibility of recollecting the precise terms used by the party, or of translating them by exact equivalents, we must conclude there is no substantial reliance upon this class of testimony.*

"The fact, too, that in the final trial of open questions of fact, both sides are largely supported by evidence of this character, in the majority of instances, *must lead all cautious triers of fact greatly to distrust its reliability.*"

Greenleaf on Ev., p. 237, sec. 200 (13th ed.), says:

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"With respect to all verbal admissions it may be observed that *they ought to be received with great caution. The evidence, consisting as it does in the mere repetition of oral statements, is subject to much imperfection and mistake; the party himself either being misunderstood, or not having clearly expressed his own meaning, or the witness having misunderstood him. It frequently happens, also, that the witness, by unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the party actually did say.*"

P. 118, he says again: "*Very great weight ought not to be attached to evidence of what a party has been supposed to have said; as it frequently happens, not only that the witness has misunderstood what the party said, but that by unintentionally altering a few of the expressions really used, he gives an effect to the statement completely at variance with what the party actually did say.*"

Note p. 238: "It is also well settled that *verbal admissions, hastily and inadvertently made*, without investigation, *are not binding.*" 17 Mass., 27.

P. 251, Sec. 214: "But here, also, as we have before remarked in regard to admissions, *the evidence of verbal confessions is to be received with great caution. For, besides the danger of mistake from the misapprehension of witnesses, misuse of words, the failure of the party to express his own meaning, and the infirmity of memory, &c.*

"*The zeal, too, which so generally prevails, ... and the strong disposition in the persons engaged in the pursuit of evidence, to rely on slight grounds of suspicion, which are exaggerated into sufficient proof, together with the character of the persons necessarily called as witnesses, . . . all tend to impair the value of this kind of evidence.*"

The *most unreliable of all human testimony*, these authorities state the rule of law, is that of an oral admission.

And as the record in this case shows, where it was one of only a few moments' duration in a casual conver-

sation; where the parties stood during it. Where the party sought to be charged was in the very midst of a press of many other business matters with many other persons; and where none of the details were gone into, as all the witnesses say.

Was it deliberately and understandingly made by the party sought to be charged thereby?

It would seem impossible for it to have been done so from the physical facts as shown in this case. It was only a few moments hurried talk, all the witnesses agree. It was while they were standing. None of the details were pretended to have been gone into. And it was while the party sought to be charged was in the midst of a press with much other business with many other persons. It would surely seem that it lacked every single element that would go to make it up one of deliberation and understandingly made.

Was the conversation correctly understood by those who undertook to repeat it? Was it correctly reported?

While it is the most unreliable of all human testimony, and is to be so considered, yet if it was deliberately made by the party making the admission and was correctly understoood and reported by those undertaking to repeat it, then it was competent legal evidence and should have been submited to the jury.

But if it is not deliberately and understandingly made, and correctly understood and reported, then it was not legal evidence and should have been excluded.

Just as hearsay would be.

Well, tested by these rules of law, how was this?

All Anderson says is that Humes said "here is $50 for you."

Not a word does he say Humes told him about a $10 fee.

He states nothing as having been said to him by Humes about the evidence of his pension.

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And it will not be said we submit from his evidence that he fixes the date.

P. Finley says that Humes said Anderson got $60 and Humes kept $10 for his fee as attorney and gave Anderson $50.

He undertakes, we submit, as his evidence shows, by a subterfuge to fix the date of the interview as October 29, 1894. This is all he says.

Laughlin states Humes said he gave Anderson $50 and that $10 was kept back as an attorney's fee, but not Humes'.

Laughlin says he don't know the day, week or month.

He says Humes stated his books would show Anderson was pensioned.

How can three parties be found who say that they heard the same talk, and yet stated it so widely different?

Anderson says it was $50. Both the others say $60.

Not a word does he say about a $10 attorney's fee or evidence of pension.

P. Finley says $60, and Humes $10 attorney fee, and that this was all was said. He says nothing was said of evidence of pension.

Laughlin says $60, and $10 attorney fee, but not Humes'.

He don't know the day, week or month. Humes' books showed Anderson's pension.

Here it is, which one of the three will be taken as the correct statement of the oral admission.

Certainly it has not been correctly understood or reported by either one of them, because they don't agree among themselves as to what was said.

Was it deliberately made by Humes?

Laughlin's evidence shows there was no deliberation about it all and no discussion of the details; a few moments hurried talk when Humes was in the press of other business matters with many other persons.

Anderson was his main witness on his claim. Also P. Finley, Laughlin and A. Finley who it was claimed supported him.

Anderson states defendant paid him $50 at his office in person and in money, and that is all he ever obtained. R., p. 20.

As shown by X. Assignment of Error, the trial court charged the jury that "Now, of course," the intelligence and reliability of the witnesses is a minor matter.

We deny that this is the correct rule of law.

We submit the true rule of law is just exactly the opposite.

But we will undertake to show that this is a very proper way to state the rule to measure this witness by.

The next question is, can Anderson fix the date he claims he got the $50, and does he know how much he got at any time?

Anderson states he knows where defendant's office is here in the city, but don't know as he could go to it. R., p. 19.

Although he went there, as the record shows, for over a year, from September 24, 1894, to after November 5, 1895. This is an ear mark of the intelligence and reliability that the court says is of course a minor matter.

He used to know defendant, he says, (R., p. 18, December 9, 1895) although he'd been having defendant make out his vouchers from September 28, 1894, to after November 5, 1895.

Q. Were you living at the same place you now live last fall—last October? (R., p. 18). Here you see in the very start the month of October is suggested to the witness by the question.

Q. When? (Did Humes give you money?) R., p. 19.

A. 'Long in October.

Q. Of what year?

A. 1894, I think it was, sir.

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Q. How came you to go there to get it? (Humes office).

A. Well, I had been carrying the papers to him and I went to him. When I went to him he told me to be there in a few days and he'd tell me what time to come, and I went there and it wasn't there.

He'd tell me then to wait awhile longer, but he'd send for me; *to keep count of the days and the time I went to him, and I couldn't do it because I couldn't read and write and take account.*

Q. What further did he say; anything about coming back?

A. He said: "Come in a few days." I went there on Saturday; he says: "Come 'bout next week, 'long 'bout *Monday* or Tuesday; some where 'long there." He says: "Come in again; come in every once in awhile. I don't know what time it will be there." And I went there when he told me.

Q. How many times had he gone there with you before you got any money from defendant?

A. He went — well, I couldn't keep count of the times now, I can tell you it was about three times, i

Here is a prosecutor that says Humes told him to keep count of the days and times he went to Humes. And he says: "*I couldn't do it*, because I couldn't read and write and take account." This right there in a very recent date of a few days. And he says he can't do it. And here when he is asked when did Humes give you pension money, and he says: "'Long in October, '94, I think."

"How many times had he gone there?" he is asked, before he got any money from Humes. And he repeats: "*Well, I couldn't keep count of the times.*"

Couldn't keep count of the times—recent days and dates that were then transpiring.

think, before I ever got the money.

Q. How did you come to town that day?

A. Come in *a spring wagon—a buggy.* Went to wagon yard down here on Main street.

Finley didn't go with me from there to Humes office. He staid down there and sent me up to the office to see had my money come.—R, p. 20.

Humes come back with $50 in his hand, and he says: "Here's $50; it's for you. Your mail is come. Here's $50." And he give me the money out of his hand and put it in my pocket and went on down to the wagon yard.—R. p. 20.

No, sir, I didn't go in the other room. I sot there in the chair and I seen him comin' and I got up and met him and he said: "Here's $50 for you." "And he says here's $50 for you" And he say in the next 10 or 15 days come back and it be the quartin' time, that's the drawing.—R, p. 21.

Here is two very materially different statements by this witness in his pretended effort to repeat what was said in answer to the same question asked only a few moments apart.

In one he says, "Here's $50; its for you. Your mail is come. And he give me the money out of his hand and I took it in my hand and put it in my pocket and went on down to the wagon yard."

This is all was said, he says in that answer.

Then he is asked the same question right over again, and he says:

"I didn't go in the other room. I sot in the chair and I seen him comin' and I got up and met him."

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And for fear he'll get the next part of his made-up story wrong, he repeats it twice:

"And he said here's $50 for you. And he says here's $50 for you."

He don't tell us anything about the mail this time. Or his giving him the money out of his hand, and his taking it in his hand, and his putting it in his pocket, and his going down to the wagon yard. No, he has something else to tell this time, and he said, "In the next ten or fifteen days come back and it'd be quart'ing time; that's the drawing."

They are altered statements. They are very materially different statements. And if either, which one of them is the true one—is the correct one—is what was really said? Can anyone tell? We submit not.

And while we are on this point, let's examine side by side the statements of Anderson, P. Finley and Laughlin:

Anderson:	P. Finley:	Laughlin:
"Your mail is come."—R., p. 20.	"His money come in to-day's mail."—R., p. 39.	"That his money had come that morning in the morning's mail."—R., p. 47.

Here are all three of the statements. The words of each one of them are materially altered by each witness. They all can't be true. But if you will take them as all true, which one of them will you say was the words that Humes used?

It just absolutely demonstrates the utter unreliability of such evidence. Anderson says Humes used four words to tell him this, Finley six, and Laughlin eleven. And to further illustrate the truth and force of this position take the charge of the trial court on this point.—R., p. 176. Near the bottom he says, in commenting on these very words of the evidence, "They (P. Finley and Laughlin) say that Humes said 'that the check had come

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that morning'—I am quoting it substantially." "The check had come that morning." Why, neither P. Finley nor Laughlin said a word about check in all that part of their evidence covering pages and pages of printed matter. The word they both used was money. And they never used any other word but money.

So that here in the case at bar you find an unanswerable argument to the unintentional change of a single word altering all the evidence.

Of course the use of the word check in the place of the word money when the trial court was trying to repeat to the jury the evidence of P. Finley and Laughlin was a purely unintentional changing of the words on the part of the trial court, but it just shows how by the change of a single word you may alter all the evidence on a given point.

And it shows another thing; it shows that all persons when speaking of a mode of business that they know of, they are more apt to use the word that really expresses that mode of doing the business than the words that the witnesses really used.

Here the trial court had been shown by the evidence in the record that the way these pension people got their pay was by checks to their order sent by the pension agent through the mail to their addresses. And the trial court thus knowing that this was the way and the only way the business was ever done, and that no money was ever sent, in commenting on the words of P. Finley and Laughlin, used the word check when trying to repeat it for money.

And while we are considering this point we will look at it in another view.

Finley and Laughlin both undertaking to repeat what Humes said to them.

The words and expressions that he used both say he said "his money come." Certainly they were mistaken in saying Humes said money. Humes knew all these

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pensioners were paid by checks to the order of the pensioners sent them through the mail.

And if he should have said to Finley and Laughlin such a thing it would have been a meaningless falsehood, that could have served no purpose to any one. His money could not have come through the mail. No one knew this better than Humes.

And even his check could not have come in to-day's mail or that morning in the morning's mail.

And Humes could not have told Finley and Laughlin such a meaningless falsehood. That could have served him no purpose. He would have been a fool as well as telling a falsehood to have made them such a statement.

For no one better than Humes knew that Anderson's check for $536.40 had been by Anderson cashed at the Mechanics' Savings Bank on Monday, October 8, '94, and the check showed that, and the bank records showed that, and the voucher showed it. And surely Humes could not have been such a fool as to have made a statement that he knew four written records showed was false and could have been so easily shown.

Anderson tries to say Humes said it was $50; Finley and Laughlin both say Humes said it was $60.

Humes could not have told them any such thing, either Anderson that it was $50 or Finley and Laughlin $60.

He did not tell them—his money. They were mistaken about this.

He did not tell them it came that *morning* or *day*. They are mistaken about this.

Laughlin says Humes did not tell them the attorney's fee was his—Humes'.

Finley and Laughlin were mistaken about Humes telling them it was $50. What Humes told them was, that it was nearly or about $550, just as it was. Anderson's check, $536.40, and his attorney's fee, $10, making

his total $546.40, and just as Humes said, nearly or about $550. And like the other mistakes they make in repeating what he said, they have altered it. It is immaterial whether it was intentionally done so, or unintentionally. In repeating or undertaking to repeat what Humes said they left off the $500 and said it was $50. They make it $60 by adding the $10 attorney fee to the $50.

It is true that Humes told Laughlin and Finley that an attorney's fee of $10 was taken out of Anderson's first pension pay.

But it is as Laughlin says it was—an attorney fee, but not Humes' attorney fee. Whereas Finley tells it that it was Humes' attorney fee. That Humes took it. That Humes said he took it.

Well, now, Humes never told Finley any such thing, and Laughlin says Humes never said any such thing.

Humes knew Chiles was Anderson's attorney. Humes knew that the $10 attorney's fee, in the regular course of business, like the pay of the pensioner, was sent by check to the attorney to his address. And he would not have been such a fool as to have told such a meaningless falsehood; that could have been of no possible benefit or advantage to Humes, and that could have been so absolutely false, and so easily proven to have been so.

Anderson, R., p. 22.

Q. Do you know—can you fix the date now that you were in town here and got the money from Mr. Humes, any better than you have done? You say it was in October. Now, what day of the week or the month was it? Do you know?

A. No, sir; I don't know. 'Bout as near as I could

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If I had taken notice maybe I could have thought of the day.

come at it, I think it was on October 29.

Can you believe from these, his own statements, that he knew about October 29th, or any other date?

He says he don't know. Can't read or write. Can't keep count. Then he undertakes to say when it was, after making such statements that he don't know.

Can any one believe after what he says that he did or could know?

Don't know, can't keep count of recent dates, daily transpiring transactions, and yet he swears he knows—can fix with absolute certainty without anything to help him fix or show it—the date, day and month of a transaction over a year past. Is it possible to believe this?

Anderson, R., p. 19.

Q. Did you get any word from Mr. Humes to come there to his office?

A. Yes, sir; I did get it.

Q. What sort of way did you get it?

A. I got word.

Q. *Did he write to you?*

A. *He didn't write to me.*

Q. *He didn't write to you?*

A. *No, sir.*

P. Finley, R., p. 37-8.

Q. How came you to go there that day?

A. *The old man had received a note from Mr. Humes telling him to come in and see him about some papers.*

Q. *What kind of notice did he receive?*

A. *Just a note saying come in.*

Q. *Do you know what became of that note?*

A. It just said, "Come in and see me about some papers." It was very short. *It got misplaced.*

Do you know what the date was?

A. That was dated in

> October some time; I don't remember the date of it.
>
> R., p. 40.
>
> A. *Well, the old man received this notice from Mr. Humes* . . . . but on Monday evening his stepdaughter came in and brought him some more notice about [illegible] money being here. . . .

This is what the trial court terms Anderson's corroborating witness.

We submit the proper term would be contradicting witness.

Here Anderson made a great mistake. This, which was the truth, and not any part of his made-up story, he failed to remember. Finley did not practise Anderson enough on this to make him remember it.

And if Anderson intended to tell the truth in this case in all things, why was it that here he told such a willful falsehood? Here he did get several notes from Humes, and what was his object in telling such a willful and uncalled-for falsehood about so immaterial a matter as to how he was notified by Humes to come in and see about his papers.

Finley here flatly contradicts Anderson, and proves that his statements about it were falsehoods. Anderson told two falsehoods about it. Said he got word when he didn't, and then denied he got a note when he did.

Finley says the note or notes came. That it was dated in October sometime. This fixed the date. And Finley and Anderson had it from Humes, and yet they do not produce it, but Finley says it was mislaid. Is it not passing strange that so important a paper as that fixed all this should have been misplaced? Is not the in-

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ference absolutely irresistable that it was another link in the chain that would have welded defendant's innocence, and that by design Finley misplaced it?

R, p. 20.—Anderson says he and Finley did not go together to Humes' office that day.—R., p 28.

This is strange. Anderson swears Finley was with him every time he was at Humes's office, except the day he says he got the $50. And Finley swears the same.—R., p. 38.

Anderson R., p. 20.

He states he went down to the wagon yard and gave Finley his money.

Q. Did Finley count it?

A. He took the money and came back to Humes' office.

P. Finley, R., p. 38.

Q. Did you count the money?

A. Yes, sir.

(Objected to by defendant's counsel as leading).

The Court: It is a little leading, *but this old man moves up so slowly, I wish you would let him lead a little.* R., p. 21.

In other words, it is an illegal mode of examining a witness, but in the trial of this man for his liberty the trial court does not sustain the objection to this illegal mode of examining a witness in the trial of a man on trial for his liberty, but asks that the District Attorney be allowed to proceed a little illegally. This is the astounding proposition that is made.

R., p. 22. Anderson states: "Mr. Humes gave me that pension certificate on the 4th of last month"; (November, 1895).

The Court: And he says he got it the 4th of last month, when it was handed to him by Mr. Humes.

A. Yes, sir.

R., p. 33, Anderson states that on the 4th of last month (November, 1895) he went to Humes's office, signed a voucher and sent it up to Knoxville. And that

he came to town on the 4th of last month (November, 1895) in Finley's buggy, and with him went to Humes' office.

This is given just to show how recklessly this ignorant old man will swear as to particular dates that he tries to fix.

Fortunately for defendant these people's hard swearing can't change the calendars of the years or dates and days of the week. If they could do so, they have shown every disposition to do it. November 4, 1895, was *a Sunday*. So nothing Anderson swears to is true. It all, in fact and truth, took place on *Monday, November 5, 1895*.

Anderson, R., p. 22.

Q. *Did you get a receipt from anybody shortly after you got it (850) from Mr. Humes?*

A. *No, sir.*

Q. *Did you get any receipt for it?*

A. *Yes, sir.*

He swears he didn't get a receipt and he did get a receipt. So if you are going to believe him, which one will you believe? The same question answered both ways, within five or six questions of each other, and within a few seconds time of each other. You might call this a swift witness. He can swear both ways very quick and in a very incredibly short time.

Q. Did you owe Mr. Finley anything? A. I owed him a little. R., p. 22.

Q. What for? A. Well, *for money I had borrowed from him before that time* on a cow.

This last answer of the old man was rather a surprise to all, because the theory of the prosecution was that it was money due from Anderson to Finley for a cow. Finley and his father, the so-called supporting and corroborating witnesses, both so swear in their evidence cited beyond. The theory that *it was borrowed money* was rather a new departure by the witness. It was not

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exactly in line with the plot as it thickens in their many contradictory statements of each other.

Anderson. R., p. 22.

Q. Did you pay him (Finley) any money for that cow? A. Yes, sir.

Q. When did you pay that to him? A. *I paid it to him* the next day after I drawed the money.

Q. Have you got that receipt? A. Yes, sir.

Q. Well, let us have it. (Witness hands him receipt).

And we are treated with another surprise here, and taken back, as shown by the next question. The receipt read, "received of Mary Anderson."

Anderson. R., p. 23.

Q. Who is Mary Anderson? A. That's my wife.

Q. Did you pay that money yourself or who paid it for you? A. Yes, sir; *I give my wife the money to pay it.* I wasn't able to go up to the house and pay it.

Q. And that was the *day before you gave your wife the money* and she brought you that receipt? A. Yes, sir.

P. Finley.—R., p. 40.

Q. Tell how this is? A. Well, on the next day after the old man received his money he owed my father $15 for a cow and calf, and the next morning after we came from Memphis that day *he* paid the old man for his cow and calf. He gave the old man a receipt.

Q. Mr. Finley, you say he owed $15 to your father for a cow and calf, and paid him the day after he got his money? A. Yes, sir.

Q. I suppose from your testifying about it, that it was *something you knew yourself?* A. Yes, sir.

P. Finley.—R., p. 41.

Q. *You saw him pay your father?* A. *Yes sir.*

Q. *The old man pulled out the $15 and handed it to your father?* A. *Well, of course, he owed him for the cow.*

Q. *He owed him for a cow and pulled out the $15 and counted it out to him?* A. *He did not count it out.*

When he give me his money down at the wagon yard, he asked me to count it and carry it home for him and I did, and he told me to keep it till the next morning and he or his wife one would come and settle with my father for the cow.

Q. *And he came up?* A. *Well, his wife came, I believe.*

Q. *So you already had the money.* A. *Yes, sir; but it wasn't coming to me—the cow money.*

Q. *And you kept out $15?* A. *Well, I had all his money.*

Q. *What did you do with the other $35?* A. *Well, I made the change with the old gentleman that morning, and then his wife got $15 to come to town with.*

Q. *You kept the rest yourself?* A. *Yes, sir.*

Q. *He did not keep the money himself, then?* A. *No, sir.*

Q. Did he ask you to keep it? A. He asked me to carry it out home for him.

Q. *You took it and kept it?* A. *Yes, sir.*

Q. The next morning he was over at the house? A. Well, I don't remember whether he was or not, but I remember his wife was.

Q. You were a witness in this case before? A. Yes, sir. R., p. 42.

Q. You testified before? A. Before.

Q. Before the jury week before last? A. Yes, sir.

Q. *Did you make any statement to that jury about cow?* A. *No, sir.*

Q. *None at all? Did you not state to that jury that you did not know the date when the old man came in town and went to the wagon yard and you counted his money, but it was somewhere between the 20th and 30th of October?* A. *Yes, sir; I stated it was between 20th and 30th October.*

Q. *You told the jury nothing about this cow transaction on the former trial?* A. *No, sir.*

Q. *Well, Mr. Finley, you knew just as much then as you*

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do now about it? A. Well, it slipped my memory at that time, but in looking over the old man's papers the other day I found the receipt.

Q. You mean by the old man, Anderson? A. Yes, sir.

Q. So you and the old man have been talking about it? A. I was down there looking over his papers.

Q. Over Anderson's papers? A. Yes, sir.

Q. And talking about his testimony in this case and about your testimony? A. Yes, sir.

Q. And you just ran across this receipt? A. Yes, sir.

Q. Mr. Finley, you don't mean to tell the jury that you had forgotten all about that cow transaction? A. Yes, sir; I had forgotten about it till I came across the receipt.

Q. You did not remember that your father had sold him a cow a little over a year ago, and that you took the money out of his pension money? A. Well, he had sold him the cow nearly two years before he paid him.

Q. You had forgotten all about the fact that you had held out $15. A. Yes; I had forgotten all about keeping out $15.

Q. And yet you remember now that it was on a Tuesday and a Saturday? A. Yes, sir.

Q. And that it was on a Monday when you came the last time? A. Yes, sir.

Q. You remember the days of the week? A. Yes, sir.

Q. And couldn't you remember the collection of the $15? A. Well, no, sir; I didn't remember that.

A. Finley, R., p. 51-3.

Q. Was he owing you anything at that time? A. Yes, sir; he was owing me for a cow and calf.

Q. Were you paid finally? A. Yes, sir; *he paid me.*

Q. Is that the receipt you gave him? A. Yes, sir.

Q. *The old man paid you* for the cow? A. Yes, sir; *he paid me.*

Q. This receipt says received of him $15? A. Yes, sir.

Q. *Was this receipt right?* A. *Yes, sir; that is right.*

Q. *That tells the way it happened, does it?* A. *Yes, sir.*

A. Finley, R., p. 53.

Q. *This says, "received of Mary Ann Anderson."* A. *Yes, sir. That was his wife. He did not come over that morning. His wife came over.*

Q. *Well, now, Mary Ann did not hand you that money at all, did she?* A. *Yes, sir; she handed me the money.*

Q. *She handed you the money, Mr. Finley?* A. *Yes, sir.*

Q. *Stop and think of that. Did Mary Ann hand you the $15 herself?* A. *Well, I think I may be a little mistaken. My son had the money that he brought from Memphis in his possession at that time, and she came up and said that Wm. Anderson had told her to come up and get the money from her son, but whether she paid it to me I won't be positive.*

Q. *You don't know whether she handed it to you or not?* A. *I don't know for certain. I don't recollect.*

This evidence of these three witnesses, Anderson and the Finleys, son and father, shows the studied plan of their evidence as planned, made up and delivered before the jury on this trial. You see so plainly marked, in the evidence of each, the theory of them all.

It is made too plain that they all made it up that each should swear that Anderson paid old man Finley the $15 for the cow.

Anderson swore to it and adhered to it until the District Attorney called upon him to produce the receipt.

It showed it was written to Mary Anderson.

In this trumped up claim of P. Finley a most fatal mistake had been made in writing the receipt. It read, "received of Mary Anderson." So the written paper that they had fixed to fix their evidence by was wrong. And not only would not fix it but worked a direct contra-

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diction of the story they had made up and so steadily adhered to swearing to.

Who is Mary Anderson? is the next question that is asked Anderson after he surprises everybody by producing a receipt that reads, "Mary Anderson."

And he answers, "That's my wife."

And even after he is forced to show the receipt, and that it is to Mary Anderson, with what persistence does he adhere to the same theory, for even then he swears

Q. By the District Attorney—"Did you pay that money yourself, or who paid it for you?"

"Yes, sir; I give my wife the money to pay it."

And to this—mark the low cunning of the old man—he adds another falsehood to it to make it more plausible: "I was not able to go up to the house and pay it."

Not one word of Anderson's evidence on this point is the truth.

He did not pay old man Finley the money for the cow.

He did not give his wife the money to pay for the cow.

And his wife did not pay the money for the cow.

He did not have his money at all. P. Finley had at his own house all of Anderson's money, and P. Finley paid his father the $15 out of the money he had in his pocket. P. Finley says (R., p. 41), "*I made the change with the old gentleman* (referring to his father) *that morning*, and *then his* (*Anderson's*) *wife got $15 to come to town with.*"

As he there says and shows, he made the *change with his father that morning. As shown by the statement itself before anyone else was there that morning but Finley and his father. He made the change with his father.*

And then he says, "*Afterwards Anderson's wife came over and got $15 to come to town with.*

But the evidence of P. Finley shows how they adhered to the theory that Anderson paid it.

P. Finley says: "He (Anderson) paid the old man (referring to his father).—R., p. 40.

Q. It was something you knew yourself? A. Yes, sir.

Q. You saw him pay your father? A. Yes, sir.

Q. The old man pulled out $15 and handed it to your father? A. Well, of course he owed him for the cow.

Q. He owed him for the cow and pulled out the $15 and counted it out to him?

[Hard pressed many times to tell how even how they claimed their made-up story was done, at last he is forced to tell or make up some story to try and fit the receipt he produced, and he says, dug up, although we submit the facts show no such thing really ever in fact took place].

A. He did not count it out. When he gave me his money down at the wagon-yard he asked me to count it and carry it home for him, and I did, and he told me to keep it till the next morning and he or his wife one would come and settle with my father.

He has been telling us all along that Anderson paid his father. Anderson came over. But now it has been forced out of him and he is trying his best to tell a story that will fit all around and he says "and he or his wife would come" and settle with my father for the cow. Why did he not wait for he or his wife to come and settle with his father? Why did he make the change with his father that morning and pay him the $15?

"Well, I already had all of his money," he said. We have no doubt of this. He says "I made the change with the old gentleman that morning and paid him the $15, and then his wife got $15 to come to town."

Q. You kept the rest yourself? A. Yes, sir.

Q. He didn't keep the money himself then? No, sir.

Q. You took it and kept it? A. Yes, sir.

We do not in the least question this statement. We

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believe it is absolutely true, and that if Anderson ever lost any money, this gentleman, as he says, took it and kept the rest whatever it may have been, and as we think the record fu'ly shows.

There is another very pregnant fact about this witness' evidence, and this evidence.

Anderson on the former trial said not a word about the cow transaction.

P. Finley said not a word about it or the receipt. Or A. Finley.

P. Finley claims he had forgotten it. Forgotten that he had paid his father the $15, but remembered the days of the week he tries to swear to—or at least tries to swear he remembers the days of the week of occurences.

His testimony shows another thing, that he was at Anderson's house talking to him about his evidence and about his own. Fixing their story.

A. Finley adheres to their theory too.

Q. Were you finally paid? A. Yes, sir; he paid me. R., p. 51.

Q. The old man paid you for the cow? A. Yes, sir; he paid me. R., p. 53.

This receipt says "received of him $15?" A. Yes, sir.

Q. Was this receipt right? A. Yes, sir; this is right.

Q. That tells the way it happened, does it? A. Yes, sir.

Q. This says, "received of Mary Ann Anderson." A. Yes, sir. That was his wife. He did not come over that morning. His wife came over.

Q. Well, now, Mary Ann did not hand you that money at all, did she? A. Yes, sir; she handed me the money.

Q. She handed you the money, Mr. Finley? A. Yes, sir.

Q. Stop and think of that. Did Mary Ann hand

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you the $15 herself? A. Well, I think maybe I may be a little mistaken. My son had the money he had brought from Memphis in his possession at that time and she came and said that William Anderson had told her to come up and get the money from my son, but whether she handed it it me I won't be positive.

Q. You don't know whether she handed it to you or not? A. I don't know for certain; I don't recollect.

R., p. 23. Objection to the introduction of the receipt.

(Objected to by defendant's council as incompetent.) The court ruled the paper admissible only for the purpose of aiding the witness' memory in fixing the date; to which defendants' counsel excepted. The paper was then read to the jury by the District Attorney, it being dated October 30, (1894.)

Admissible only for for the purpose of aiding witness' memory in fixing the date.

This witness, Anderson, swears more than once that he can't read or write. Can't tell one paper from another. Don't know a single word, letter or figure on the paper. Don't know the day of the week or month it was, he repeatedly says. Can't keep count of the daily transpiring occurrences. Could not count money when it was given to him on the witness stand.

And yet a written paper is ruled competent to aid him to fix a date.

If he had been born totally blind in both eyes, could it have aided him any more than it could this witness on that stand?

If he had been a dumb man, could he have spoken less of the truth?

If he had been totally deaf in both ears, could he have given less heed to it in his testimony?

If the receipt had been written in Sanscrit, or Hebrew, or Chinese, or any other foreign or dead language, like the Greek or Latin, it would have been just as intel-

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ligible and easily read by this witness as our language, or any other hieroglyphics.

The District Attorney still, as it is seen, supposed that Anderson had in truth given his wife the money, as he had sworn he had. The fact had not then developed that P. Finley had kept the money and paid it, and so the question was put: "Before you gave your wife the money?" A. Yes, sir.

Q. I show you this paper (handing paper to witness). Can you read or write? A. No, sir; I can't read or write, either. R., p. 23.

These witnesses say Anderson's wife paid A. Finley. And the receipt is in her name.

Is it not strange beyond comprehension that they never introduced this so important witness, if this transaction was real, *bona fide* and the truth? No, it was a made-up story, and Anderson had broken so badly, and Finley, son and father, forced to break so badly, that P. Finley would not risk another witness he had to train and practice so hard.

Anderson, R., p. 21.

Q. Nor any paper—voucher like that (showing paper)—for you to sign? Did you sign any paper at all on that other day that you went back for your first quarterly payment?

A. No, sir; I never signed no check at all.

R., p. 23.

Q. On the day that he paid you the $50 did you make your mark on the back of that paper on that day?

A. No, sir; I didn't.

Anderson, R., p. 29–30.

Q. See if you signed that paper (handing paper to witness). You say that you counted the other money at the office and it was in bills?

A. I don't know whether I signed this or not. I couldn't tell one paper from another. I signed a paper like this, but I couldn't tell whether I ever signed that one or not.

Q. Well, did you sign a paper like that one on your first quarterly payment?

Q. Well, did you make your mark to a paper like that on that day?

A. That same day I drawed that $50?

Q. Yes.

A. No, sir.

Q. Well, did you sign a paper like that on the day you went back there to draw your first quarterly payment?

A. *Like which one, that check? No, sir.*

Q. At that time did you sign a paper like that (handing another paper to witness).

A. No, sir; I didn't.

The Court. *He says he never did sign any check?*—R., p. 35.

A. *No, sir; I never did sign any check. I didn't make nary a one.*—R., p. 32.

A. Yes, sir; I signed one that day.

Q. The day you drew the first quarter after you had gotten the $50 the first time you were back?

A. Yes, sir; I signed one after I drew the first quarter.

Q. At the time you drew your first $36 did you sign any papers at that time?

A. *Yes, sir; I signed a paper like that (indicating a check).* R., p. 23.

Q. And the next time when you got the first quarter you signed one paper?

A. Yes, sir.

Q. That was a voucher, a long red paper?

A. Yes, sir; "I never seen any (check)."

The compliment of the answer he made to the court is (R., p. 23): A. *Yes, sir; I signed a paper like that—(indicating a check).*

Q. Did you not tell the jury awhile ago that you had signed a paper like that to go to Knoxville and that you remembered that? R., p. 35.

(Objected to by District Attorney as leading).

Q. I so understood him and I want to be sure. I understood you to say, William, that before you got any $50 you came in here to Mr. Humes's office and you signed one of these papers that we call vouchers, but it has been described to you as a "long paper." Am I

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right or wrong about it? Did you say you had made your mark? A. You must be right about that, signin' that paper.

The Court:

Q. Do you mean that you signed it?

A. Yes, sir; I did sign one before I got $50. I signed one paper.

Q. But you never did sign any paper at all there (Humes' office) before you got that $50?

A. No, sir.

Anderson was most too modest for P. Finley. Anderson had not gone the whole length. This was left for P. Finley to do, and without a moment's hesitancy he did it. Anderson said he signed his voucher that went to Knoxville before he got anything. That when he got his first quarterly, he signed both a check and voucher. But it was left for P. Finley to swear to it right, and he did so. R., p. 40.

Q. Did Anderson come in for that quarter, do you know? A. Yes, sir; I came with him.

Q. Were any papers signed at that time? A. No, sir.

So that here is Anderson's evidence on another vital point. He is up against it again.

Here he is against his so-called supporting and corroborating witness, P. Finley, again.

And the above is Anderson's oft-repeated self-contradictions of himself.

And the court is asked, which are to be believed as the truth? Does not the witness destroy himself by his own contradictory statements of himself?

R., p. 24, Anderson.

Q. How old are you? A. I don't know sir, how old I am. I couldn't tell how old I was, because I don't know.

How can you measure the depth of the lack of intelligence of a person who says he don't know how old he is?

Q. "You have no idea how old you are, have you?"

A. "No, sir; I don't have no idea."

Is there any measure to the density of the ignorance of a person who has no idea how old he is? But he adds to the last answer, "I'm somewhere 'long about 75, I reckon."

Anderson.—R., p. 25.

Q. I will see if I cannot refresh your recollection. Now did you ever go there and take some drinks?

A. Oh, I didn't drink none 'thout I was sick.

Q. How long since you drank?

A. Well, I couldn't tell you. It was such a little I never took notice of it.

Finley, a supporting witness as it is called, testifies on this same point in regard to Anderson.

Q. He gets drunk occasionally?

A. He used to get drunk. I have not seen the old man drinking for a long while.—R., p. 54.

Q. You did not drink any last year?

A. Not none to hurt nobody.

Q. Now, Anderson, there is a difference of opinion about hurting anybody. Well, you did drink some, didn't you?

A. I drink water and coffee and one thing and another. I dont drink no whisky.

Q. Nor beer?

A. No, sir.

Here he swore he did not drink any whisky or beer. Tried to make the impression that he never drank at all.

And here is his supporting witness that swears he used to get drunk.

So what he swore was far from being the truth about this.

Besides making several contradictory statements about it himself.

First, he said, "Oh, I didn't drink none—'thout I was sick."

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Q. How long since you drank?

A. Well, I couldn't tell you. It was such a little I never took no notice of it.

Q. You didn't drink any last year?

A. Not none to hurt nobody.

Q. Well, you did drink some, didn't you?

Notice how in his next answer he tries to throw the questioner way off:

"I drink water and coffee and one thing an' another."

Then comes out with a positive denial:

"I don't drink no whisky."

Q. Nor beer?

A. No, sir.

A. Finley, the so-called supporting witness, swears Anderson used to get drunk.

So Anderson, to say the least of it, did not tell the the truth about this.

Anderson. R., p. 28.

Q. (71X) Where was Laughlin then?

A. God knows; I don't.

Q. (72X) Was he (Laughlin) at Mr. Humes' office?

A. Yes, sir.

This is just submitted to show how this witness swore.

In one breath he swore he did not know where Laughlin was.

And in the very next breath he swore Laughlin was there in the office.

How can you believe or rely on what such a witness swears?

Anderson. R., p. 29.

Q. Why did not you count it (money)?

A. I did count it.

Q Where did you count it?

Q. Now, you say that you signed one of these papers—the large paper. If you are not too much bothered now, see if you can

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A. I counted it as he give it to me. I counted by the bills. I just took it an' looked at it like openin' the leaf of a book. I knowed what sort o' bills they was.

Q. You did count it at the office, though, before you left the office?

A. I counted it.

Q. Do I understand you correctly to say that you counted that money, that $50, at Mr. Humes' office? Am I right about that?

A. Mr. Humes took the money an' counted it, like my finger, so (indicating), and says: There is $50.

Q. Did you count it?

A. Well, I took his word for it.

count that (handing some money to witness). Look at those bills. Do you know what those bills are? Count that money and tell us how much there is. (The witness here looked at the bills handed him and attempted to count them).

Judge Greer: How much is there, Anderson?

The Court: Can you count that or not?

A. I can't tell you, 'zactly.

Judge Greer:

Q. The other was in bills, just like that?

A. Yes, sir.

Here he swore he did and could count money, but when pinned down to it on the witness stand it is shown he couldn't.

And now I give the so-called supporting witnesses again, to swear that Anderson could count money. See what they say:

P. Finley, R., p. 43.

Q. Can Anderson count?

A. You mean money?

Q. Yes.

A. No, sir; he can't count money correctly.

A. Finley, R., p. 54.

Q. He (A.) can't count money?

A. Well, I don't suppose he could count bills of money.

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Here is what is called corroborating evidence. We would call it contrary evidence.

Anderson, R., p. 30.

Q. What time of day was it?

A. Well, it was long about 12 or 1 o'clock; between 12 and 1.

P. Finley, R., p. 46.

Q. Mr. Finley, when you came in that morning—I allude to the day that you counted the $50—you and Anderson got here early in the morning, did you not?

A. It was between 10 and 11 o'clock, I think, when we got to town.

Q. And it was about 3 o'clock when you met him at the wagon yard?

A. Between 2 and 3 o'clock.

Q. You got here between 10 and 11 in the morning, and you saw him start off to Mr. Humes' office, and then you did not see him any more until between 2 and 3 o'clock at the wagon yard. That is correct, is it not? A. Yes, sir.

Q. Where the old man had been in the meantime, or what he had done, you of your personal knowledge do not know? A. No, sir.

Anderson, R., p. 30-7. A. to Q. Did not make that mark on that check, and Mr. Humes and Mr. Purcell did not witness it. Did not sign it in the presence of those persons and did not make mark on it. And then

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he did not take it in his hand and did not go with Sanderlin around to the Mechanics' Savings Bank, corner Main and Madison. Sanderlin never went with me in his life, nowhere. I don't know him.

Though he served in the regiment in the war with him. And he did not go with the paper and present it to the cashier and did not say that he was Wm. Anderson, and the cashier did not ask Sanderlin who went round to identify him, if he were Wm. Anderson, and Sanderlin did not identify him. Mr. Young Humes, the cashier, did not pay him $536.40 on that check on October 8. He never seen any. All this Anderson testifies.

Q. In going down the steps, don't you remember to have met a colored woman who was after a pension herself, and that you had a piece of paper in your hand?

Mr. Simonton—Q. What steps, Colonel?

Col. Gantt—Q. Lowry Humes' steps. (To witness) That you had the paper in your hand and Sanderlin was with you, and said, or you said, that you were going round the bank to get the money? A. No, sir; I don't *recollect* nothin' about it.

Q. And these large papers, you say you signed one of them? You say you remember to have put your mark on these papers? Did you put your mark on more than one of them? A. Yes, sir.

Q. And each time you put your mark on at Mr. Humes' office, did you? A. Yes sir.

Q. Do you know what you signed that paper for—those papers? A. Yes, sir.

Q. And what did you do that for? A. Well, I signed it to draw money on it.

Q. After you had signed that paper it would go to Knoxville, wouldn't it? A. Yes, sir.

Q. And about a week or ten days after that your check for the money would be due? A. Yes, sir. R., p. 32.

Q. When did you cease to go to Mr. Humes to get

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it? When did you quit? When was the last time you went to Mr. Humes and signed any voucher, and it was sent up to Knoxville and in about a week or soon afterwards your check came? When was the last time? A. Let me see. I signed the last voucher that was sent up to Knoxville to get my money; I signed it at Mr. Humes' office.

Q. The last voucher? A. Yes, sir. R. p., 33.

Q. Well about how long was that, two or three months? A. No, sir; I told you just as plain as I could it was on the 4th of last month I signed it to go up to Knoxville.

It was not the 4th—that was Sunday. But it was Monday, Nov. 5, 1895. This shows how recklessly the old man guesses, and swears so positively to a date.

Q. Well, that would be November 4th, wouldn't it? A. Yes, sir.

Q. And the 4th of last month you went to Mr. Humes' office and signed one of these vouchers, and that voucher was sent up to Knoxville, and then in a week or so after that the check came, didn't it? A. Yes, sir.

Q. How did you come to town on the 4th of last month? A. I come with Mr. Finley's buggy.

Q. Was he with you at Mr. Humes' office? A. Was he with me? Yes, sir; he was with me.

Q. He went with you to the office. A. Yes, sir.

Q. That was on the 4th of last month? A. No sir; let me recovery back. It wasn't Mr. Finley; Mr. Finley was sick. His brother went with me.

Q. Now, that was when you signed the voucher, not when the check come? Did you go again to Mr. Humes' office to get the money? Yes sir; I went to Mr. Humes's office.

Q. And then you got the money on the check, did you? That was eight or ten days after November 4th? A. Oh, yes, sir; I got the money on the check, but I tell you how I got it on the check; I trade down here

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with Mr. Polk and Spining, *and it was too late for me to go to bank*, and I went there and they cashed it for me.

Q. And it was the next day you sent the money to pay for the cow? A. Yes, sir.—R., p. 34.

The court: *I wish you would ask him whether, when he got that $50, he knew there was more due him, and why he did not say anything about it if he did.*

Re-examination by Mr. Simonton:

Q. When you got your $50 did you know that was all the money that was coming to you or not, in your first payment of pension money? A. I thought it—I thought it was more comin' to me.

Q. Did you say anything to Mr. Humes about not getting enough, or anything of that sort? A. Mr. Finley did; he went up there.

Anderson:

Q. *But was there anything that passed between you and Mr. Finley about not being enough money at the time you got the $50?* A. *No, sir; I didn't say anything.*

P. Finley.—R., p. 39:

Q. *Why were you going down to see Mr. Humes?* A. *Well, the old man complained that he thought he had not been dealt with fairly, and asked me if I would investigate and see about it.*

Q. What did Mr. Humes say? A. He said that was what was 'lowed to old soldiers.

The court: *And he says he told him that when his quarter fell due there would be some more. What I want to know is why he took $50 and said nothing, and went away from there. It seems to me that needs clearing up.*

Q. Did he say anything about whether there was any more or not, or whether he kept any. A. No, sir; he didn't say whether there was any more, or whether I'd get any more or not, or anything 'bout it at all.

Q. What did he say about the quarterly payment? A. He said, in a few days come an' I'd draw some—$36—an' it wasn't more than ten or fifteen.—R., p. 35.

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Judge Greer: Q. Now, how much money did you get each month. A. $36.

Q. You get that every month? A. It comes to me every quarter—every three months.

Q. And you know that means $12 a month? A. Yes, sir. R., p. 35-6.

Q. And you know that was what was allowed you for your first payment, too, didn't you? You know that you were getting some back money that was allowed you? A. *Yes, sir.*

Q. And you know it was at that kind of a rate, didn't you? A. Yes, sir.

Q. *And you expected to get your back pension when you went in there, and Mr. Humes gave you the $50?* A. *Yes, sir.*

Q. *And you knew you would get $36 four times a year?* A. *Yes, sir.*

Q. *And you knew that this was for back pay?* A. *Yes, sir.*

Q. *Did you know your pension had been allowed when you got that $50?* A. *Yes, sir.*

Q. *Did you know it before that time?* A. *Yes, sir; I knowed it.*

Q. Who told you? A. Why, I was told that when I was mustered out.

Q. You don't understand. *You made an application to Mr. Deaderick to get a pension?* A. *Yes, sir.*

Q. You did not get that right away? A. No, sir.

Q. *Did you know when you went to Mr. Humes to get the $50 that it had been allowed?* A. *Yes, sir.*

Q. *How did you know?* A. *Well, Mr. Humes told me himself he expected I'd get $300 or $400.*

Q. When did Mr. Humes tell you that? A. It was the first time I begin goin' to him. He said, "*You'll get a right smart when you begin to draw*"

He says he used to know defendant. R., p. 18. And

yet he swears that he made out his voucher for him on the last draw day in November, 1895, before this trial.

Anderson, R., p. 20.

"Mr. Laughlin came with me, but he went right out." R., p. 28.

Q. Mr. Laughlin was not with you when you say you got the money?

A. He wasn't there when I got the money, but he was there when I got there and I met him when he was comin' away in the room up stairs; I met him and he come away.

Laughlin, R., p. 49.

Q. If you had met Wm. Anderson?

A. I have no recollection that I did meet him.

A. Of course I told you I met him and he come away. A. I met him.

Q. He was coming down and you were going up? Did you say anything to him—Mr. Laughlin? A. No, sir; I didn't say anything to him. A. *I don't know whether I saw him or not.*

R., p. 26.

Q. Where would you get off the car when you got to Memphis? A. Get off at the wagon-yard down here.

Q. How far is that from here? A. Well, 'bout three-quarters of a mile I reckon, or a mile. Well, it's a mile.

Q. Then how would you make the balance of the distance from the wagon-yard; would you walk it? A. Oh, yes, sir; comin' on the street ain't like walkin' on the ground an' muddy.

Q. *A fellow can walk a heap further on the street than out in the woods or on the farm?* A. *Yes, sir.*

Q. You came on the car and stopped at the wagon-yard and wanted to come to Mr. Humes' office? A. Yes, sir.—R., p. 27.

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Q. Now, Mr. Humes' office was either here on Madison street, or over on Court street? A. I reckon it was.

Q. Well, it was about three-quarters of a mile from the wagon-yard? A. I reckon so, sir. I don't know 'zactly; near as I can come at it.

Q. Would not the car have brought you and put you off within 50 yards of his office? A. I was talkin' to the attorney 'bout when we come.

Q. I am talking about the car bringing you within 50 yards of his office, and yet you say you got off at the wagon-yard and walked three-quarters of a mile? A. Well, I did.

Did you get off at the wagon-yard every time? A. No, sir.

Q. Where did you get off? A. Got off down the street here; down Main street.

Q. So you would be pretty close to Mr. Humes' office, and the walk would be a pretty short one? A. Mr. Humes' office, when I went there, was over on that next street—R., p. 27.

Q The car would come pretty close to his office wouldn't it? A. Yes, sir; I guess it would.

Q. Yes, you have come to Raleigh and come to Memphis, and concluded not to stop at the wagon-yard and come three-quarters of a mile to Mr. Humes' office? A. No, I was talking 'bout when Mr. Finley come with me, *and come with his mules with the wagon. I stopped the buggy at the wagon-yard.*

Q. Well, see if I remember you right now. I understand you to say you hardly remembered ever to have come all the way through in the wagon from Mr. Finley's place last year? A. That is the way you would come in the winter time toward the first of the year.

Q. I asked you did you come from his place to town in the wagon or buggy, that you can remember, and if so, how often? A. I couldn't tell you how often

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I tell you I was sick. I can't remember how often, but I know I come, but I can't tell 'zactly how often.

Q. Well, did you most commonly come in the car? A. I come in the car a good many times, and then when it was wet an' rainy we'd come on the car.

Q. Well, now, you say that every time you went to Mr. Humes' office Finley went with you? A. Every time except that time the day that $50; he was down at the wagon yard and he went up there after I went away.

Q. You don't know whether he went there or not? He told you he did, I suppose; you were not with him? A. I wasn't with him.

Q. He wasn't with you on that occasion? A. No, sir.

Q. He was not with you when you say you got the money? A. No, sir.

Q. Can you count money? A. Well, I can sometimes, when I ain't in trouble. R., p. 29.

Q. You can't count it when you are in trouble? A. Well, when I'm bothered like I am now you might give me money now here to count an' I couldn't count it, "when I ain't in trouble" "when I'm bothered like I am now."

Did it ever trouble a person when they were telling the plain, simple truth? Does it ever bother them? Never. No witness, however ignorant or wise, was ever troubled or bothered by telling the plain and simple truth. It does, though, trouble and bother and perplex the wisest person when they try to tell and keep straight a made-up story like this, and no wonder the ignorant old man should have cried out twice in the agony and anguish of his perplexity that he was in trouble and bothered.

Q. You come in frequently, didn't you, on the

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cars? A. No, sir; no more than when I come to see 'bout drawin' my pension.

Q. *You were never in Memphis except for that purpose?* A. *That's the only time I come.* R., p. 25.

Q. How long does it take you to come from Mr. Finley's place to Raleigh? A. I don't know, sir; never took no particular time, always come as quick as we could.

Q. Did you ever come all the way from his place up there to Memphis in his wagon? A. Yes, sir; I come all the way with him in the wagon—all the way from his house to Raleigh.

Q But I mean to Memphis. Did you come all the way from his place? Now, it is nine miles to Raleigh, then and three miles from there out to his p'ace. Now, did you come all the way in the wagon, or did you come to Raleigh in the wagon and the balance of the way on the car? A. Well, since I study a while, 'case I don't recollect acomin' in the wagon as I know of, although we have come one time in the wagon, but it slipped my memory but this time.

Anderson, R, p. 31.

Q. What year did you go to live with Finley?

A. I don't know 'zactly what year. It's been gwine on four years ago.

Q. What year would four years ago be?

A Well, most anybody could count back; they could tell 'bout that; 'bout '90, I reckon; the year of 1890 I reckon. This here is 1895.

Q. And if this is 1895,

P. Finley, R., p. 43.

Q. How long has he been living there, Mr. Finley?

A. It will be four years this coming January—next January.

Q. So he came there in 1892?

A. Yes, sir.

four years ago would make it 1890?

A. It would be more than four.

Q. Make it five years then?

A. Yes, sir.

R., p. 34.

Q. Did you say anything to Mr. Humes about not getting enough, or anything of that sort?

A. Mr. Finley did it. He went up there.

Q. Mr. Finley, isn't it a fact that you employed a lawyer?

A. Well, of course, Judge, I had no reason to believe that it was any more. *And I made no complaint myself.*

There are two marked facts about this witness Anderson's evidence. He says he thought there was more coming to him when he says he got the $50.—R., p. 34.

He says "Mr. Humes told me himself he expected I'd get $300 or $400.—R., p. 36.

Humes told him, "You'll get a right smart when you begin to draw."

He says he knew his pension had been allowed when he says he got the $50. He knew it was at the rate of $12 a month. He knew he got $36 a quarter. He expected to get back pension when he says he got $50. All these facts he says he knew. And yet he tells the story that he went there and Humes gave him $50, and he went away and never uttered a word of complaint to him. Isn't it ab-olutely beyond the power of a human being to believe this incredible statement?

Another thing; he got his pension in October, 1894. He says Humes only gave him $50. And yet for over a year after he says he got this $50; every three months he went back to this same person to make out his voucher for him. And you have Anderson's evidence with its

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many, many contradictions. Where he many times directly contradicts his own sworn statements. It is absolutely impossible to reconcile them with each other so that you can say which is the truth. He can't read or write. He has no idea how old he is. He can't find a place in a city where he has been going for over a year, and lived for over thirty years. In one breath he says he don't know the day of the week or month. He says he couldn't keep count of recent dates as they transpired. He says it was 'long about in October, 1894, he got his money. He can't count money. He swore he did and he didn't count the $50. He swore he paid the money for the cow, if there ever was any such transaction, when he didn't. Then he swore he gave his wife the money to pay for the cow when he didn't. P. Finley had his money all the time. P. Finley paid the money for the cow if any such transaction in fact ever took place. Anderson swore he never drank. A. Finley swore he did. Anderson swore several times he didn't sign any paper before he got the $50. Then several times he swore he did. He swore at one time in his evidence, several times, that he never made his mark on a check. That "he never seed nary one." Then he swore several times he made his mark on checks. He swore he didn't know one paper from the other, or whether he signed a paper or not. He swore Laughlin was there and that he wasn't. He swore he didn't complain to P. Finley, and Finley swears he did. A. Finley swears he is a dull, slow old man. Can anybody on earth, in the face of this, his own sworn evidence, believe that he knows it was October 29, 1894, when he got, as he says, $50 in money, or that he knows the date when he got his check and went to the bank and got his money on the check, or, as he can't count money, in fact that he knows how much money he got or how much he gave P. Finley at the wagon yard on October 29, 1894, if any such thing ever took place? Is this the kind of evidence that will be taken in denial of

the record evidence of the sworn certified voucher for $546.40 under the official seal of an officer and his mark and oath to the same witnessed by two other persons which he himself says he signed by making his mark to it, and swearing to the same, and it went to Knoxville before he got even the $50 he claims he got? Is such evidence to be taken in denial of the record evidence of the voucher check and bank records; in denial of the witness of the law, as this court terms it, in the Coffin case—the presumption of innocence? Is it such as to overturn this witness of the law—this presumption of innocence, and show guilt beyond a reasonable doubt? Is this such evidence as will be taken in denial of five other witnesses of intelligence?

Laughlin, and P. and A. Finley, it is said, are Anderson's corroborating witnesses.

What is it they will corroborate him in? They say he can't read or write. They don't know how old he is. They don't pretend to say he knows the days of the week, month or year. In fact they contradict him on this question because he swore he went to live with Finley in 1890 and Finley says it was 1892. He says he can and he can't count money, and that he did and he didn't. They say he can't count it. So I take it that is the right side on that question. He can't count money. He and P. and A. Finley swore first that Anderson paid for the cow. Then that his wife paid for it. Then they all swore that Anderson didn't pay for it. That P. Finley had all of his money, and P. Finley paid his father, A. Finley, for the cow for Anderson. They all agree in this as to what that transaction was, or how it took place, if in fact any such thing ever took place, which we submit the facts as disclosed by this record show it did not. They all started out to tell one story about it, and when the receipt was produced they then had to swear the way it showed, whether it was the truth or not, and it was not, as we submit, and the receipt story is nothing but made-

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up evidence out of the whole cloth. He swore he didn't drink. A. Finley cross-corroborated him in this, he swore he did get drunk. Anderson swore he signed many papers. P. Finley swore Anderson didn't sign any papers. This I take it we would call corroborating Anderson where he swore he didn't sign any papers. But to that part of Anderson's evidence, where he swore he did, P. Finley fails to corroborate him. Anderson swore Laughlin was there. Laughlin swore he wasn't. In this Laughton corroborates Anderson's statement where he says Laughlin was not there, but where he says he was, Laughlin fails to corroborate that part of it. Anderson swore he didn't complain to P. Finley, Finley swears he did, but I suppose you call this corroborating or supporting evidence.

But they are to support or corroborate Anderson. What is it about Anderson's evidence that they are going to undertake to corroborate him about? Not as to counting the money, because they say he can't count it. None of them claim to have been with him when he got the check, or whatever it was. They don't pretend to say they were. So they don't know how, when, what, or how much he got. According to their own story he was across the city, three-quarters of a mile from P. Finley. It was 10 or 11 o'clock. And P. Finley says he saw him between 2 and 3. Where he had been or what he had done in the meantime he don't know. He don't know whether he was at Humes' office at all that day or not. But they say they will corroborate him because they afterwards had a talk with Humes, and the proposition is that they will prove that as, or in the nature of, an oral or verbal admission. Well, if this is the case, then we want it considered in the light of the rules of law governing such evidence. It is to be taken and considered as the most unreliable of all testimony, but was it deliberately and understandingly made by Humes? And if so,

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was it correctly understood and reported by Laughlin and P. Finley?

The supporting—corroborating—is to be as to the date, October 29, '94, and the statement of Humes to them on a day in the nature of an oral or verbal admission.

With these rules of law before us, let's see what the witnesses say:

Anderson says Mr. Humes said, "here's $50 for you" (R., p. 20), and P. Finley and Laughlin both state that Humes said it was $60.

So they and Anderson disagree as to what Humes said about the amount.

R., p. 34. Q. (To Anderson by District Attorney) Did Humes say anything about whether there was any more or not, or whether he kept any? A. *No, sir; he didn't say whether there was any more, or whether I'd get any more or not, or anything 'bout it all.*

P. Finley. R., p. 37.

Q. Could you identify what time in October that was? A. I can't the date, but I can the day of the week.

Q. What was the day of the week? A. It was on Tuesday.

Q. Tell as near as you can what time in October. A. Well, somewhere along about the 1st of October; perhaps the 10th or 12th, or somewhere along there; I can't tell, exactly; I remember, though, the day was Tuesday and so the old man did come; I brought him in again.

Fortunately for defendant P. Finley can't swear away the days of the week and month, so as to change the calendar, for he has shown every disposition to do so.

But October 10, '94, was Wednesday and October 12, '94, was Friday.

So if Finley is so sure it was a *Tuesday*, and so sure

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it was the *10th or 12th October, '94*, then his statement is not true, for it was not either.

It was not the 10th or 12th October, '94, if it was *Tuesday, and Tuesday was not the 10th or 12th October, '94, but the 10th October, '94, was Wednesday and the 12th October, '94, was Friday.*

R., p. 39.

Q. State to the court all the conversation that took place as it occurred.

A. After we got down there Mr. Laughlin told Mr. Humes, "I see you paid the old man some money." He said, "Yes, sir; his money come in to-day's mail." He asked him something about the amount, and he said the old man was allowed $60, and he retained $10 and paid the old man $50, and went on to explain that the old man's *pension was allowed under the new law, and was not so much as it would be under the old law*, and was $12 a month. *That was about all that was said, I believe.*

Q. And that it was $60, but he retained $10?

A. *He had retained $10 for his fee, which the law allowed him, and paid the old man $50.*

Q. What explanation did he give about the $50?

A. *Well, that it was granted under the new law; that it was not so much under the old law.*

So here you have it; which one of his statements is true? He puts it both ways. Which one of them was what Humes said to him or in his hearing? That it was not so much as it would be under the old law, or that it was not so much under the new law.

R, p. 40.

Q. Now, you say on that occasion that you came in there and made inquiry about the $50. That was on Monday?

A. No, sir; it was on Tuesday.

Q. Can you fix that date?

A. Yes, sir; I can fix that date. It was October 29th.

And here the witness, P. Finley, has slipped up again. How hard it is to tell a false story and make it all agree. October 29th *was not Tuesday*. But a little thing like swearing the days of the week around on the calendar to make them fit the days of the month never fazed this witness. He has changed it often enough to break himself down in this case. And he kept the practice up with unvarying regularity.

Q. *The first time you were in there was on Tuesday, the next time Saturday, but you cannot give the exact days of the month, but it was in October some time?* A. *Yes, sir.*

Then he is asked if there is any way that he fixes it in his mind.

Then he undertakes to tell the story of the cow transaction.

He never told the cow transaction before the jury the week before in this same case, if any such transaction ever really took place, and we submit the inherent facts show it never did.

On that trial he could not fix the date. Swift witness now, he goes off and trumps up this statement to try and aid him to fix the date.

Does he fix it?

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You have his own statement here for it; he says it was *Tuesday, October 29th. Well, October 29, 1894 was not Tuesday.* So his made-up story here he contradicts himself. Anderson could not remember the days of any week. He did not know he swore, but he tried to *October 29th. And this, P. Finley says, was Tuesday.* So Finley slips on his well-laid plan. Like the three additional facts which he stated on this trial, namely, the cow transaction, that Anderson complained to him, and that he employed Attorney Laughlin and paid him $5 out of Anderson's pension money *the day he got it*, it slipped his memory. Of course it slipped his memory, for if he had have remembered what day of the week October 29th was, he would have swore to it right whatever the day had been, so his story would be straight if his swearing could make if so. A little thing like making the days of the week change around by swearing to them, or the month, why that could never make him hesitate an instant.—Laughlin, R., p. 47.

Q. Well, were you at Humes' office any time last fall, in October, in company with Finley? A. Well, I was there about a year ago, or perhaps I should say last fall; *whether it was October or November I could not be positive*, but one of those months along there.

Q. *Do you remember what day of the week that was?* (R., p. 48.) A. *No, sir; I have no recollection at all as to the day of the week or of the month, either.*

Here is Laughlin's testimony as to the date P. Finley tried to fix. And unquestionably Laughlin does not corroborate or support Finley as to the date he claims it was.

For Laughlin says: "I have no recollection *at all as to the day of the week or the month either.*"

Q. What occured when you got down to Humes office? (R., p. 47.) A. *I*

P. Finley, R. p., 39, says:

"I see you paid *the old*

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believe I did the talking myself, or did the most of it. I believe I commenced the conversation by saying "I see you paid the *old negro $50.*" He said yes; that his pension *money* had come *that morning in the morning's mail*, $60, $10 of which had been retained by him as an attorney's fee, and the balance, $50, he paid over to Anderson. I asked him further as to the evidence that Anderson had about his pension or of his pension, and he stated that his books would be the evidence that the pension had been granted him.

man some money. He said, "Yes, sir; *his money come in to-day's mail.* "He asked him something about the amount, and he said the old man was allowed $60, and he retained $10 and paid the old man $50, and went on to *explain that the old man's pension was allowed under the new law and was not so much as under the old law, and was $12 a month. That was about all that was said, I believe.*

Here is Laughlin and Finley's statements of the same conversation they claim to have had with Humes. And you readily see what different words they so often use in undertaking to repeat what they claim Humes said.

Laughlin says he (Laughlin) did the talking himself, or the most of it. And Finley corroborates Laughlin in the statement that Laughlin did the talking.

Laughlin:

I believe I commenced the conversation by saying:

"I see you paid the negro *$50.*

He said, *Yes;* tha. *his pension money had come this*

Finley:

Laughlin told Humes, I see you paid the negro *some money.*

He said, *Yes, sir; his money come in to-day's mail.*

Laughlin asked Humes

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morning in the morning's mail.

I asked him further as to the evidence Anderson had of his pension, &c.

about the amount, &c., and Humes went on to explain the pension was allowed under the new law, &c.

That was about all that was said, I believe.

So it is too plainly shown by their own words that they do not agree even among themselves as to what Humes, in fact, did say. They really contradict each other as to what he did say. And if they differ so widely as to what Humes did, in fact, say in that short conversation, standing of a few moments, and change so often the words they say he said, is it at all to be wondered at that they left out intentionally or unintentionally one figure 5 from the conversation they did have with him, and that when he told them Anderson's check for pension was for about $550 and $10 off for his attorney's fee that they should say $50, and the $10 attorney fee made it $60 in all?

Laughlin. R., p. 47–8. Says Finley and Anderson were under the impression that if any pension had been granted at all—I will say Anderson—I, perhaps, should say that Finley *knew* that if any pension had been granted at all it should have been commenced with a large amount.

P. Finley. R., p. 44, says:

Well, judge, *I had no reason to believe that it was any more, and I made no complaint myself.*

Q. Did you not, in answer to my question, say *that you guessed it might be more?*

A. *Well, that's all I had to go by; just merely guesswork—supposing and guessing.*

Here Laughlin and Finley flatly contradict each other on this point.

And was this statement—conversation, oral or verbal admission, made deliberately and understandingly by

Humes? Finley says nothing about this, except that it was a very brief interview. And Laughlin fixes that it was so. R., p. 49.

Q. The conversation you had in Humes' office was a very brief one? A. Well, yes; I believe *it lasted only a few minutes.*

Q. *So brief, I believe you testified, that you did not sit down in the office?* A. *Yes, sir.*

Q. You were there only a few minutes? A. Yes, sir.

This proof of the prosecution not only negatives the idea that the oral or verbal admission—statement—in such a conversation was deliberately and understandingly made by Humes, but shows affirmatively—is affirmative, not negative, proof of the fact that it was not deliberately and understandingly made by Humes. And so lacks this essential ingredient to make it competent evidence.

Laughlin:

Q. And that did not allow as much as the old pension law?

A. Yes, sir; so Humes told me.

P. Finley, R., p. 39:

That it was not so much under the old law.

Here Laughlin and Finley flatly contradict each other again.

Laughlin, R., p. 49-50:

Q. Laughlin, about retaining of $10 as an attorney's fee, it is not a clear memory to you that he said he retained it or that he said it was retained?

A. Well, I won't say that he said he retained it as "my attorney's fee."

P. Finley, R., p. 39:

Q. And that it was $60, and he retained $10?

A. *He had retained $10 for his fee, which the law allowed him,* . . .

Q. Whether Humes was the attorney or somebody else was the attorney, you would not undertake to state?

A. No; I would not undertake to state that.

Here they contradict each other again flatly.

Q. Laughlin, I note that I asked you before, and will ask you again, you did not go into any details with Humes about the exact details of this pension or about the cashing of the check? A. No, sir; nothing was said about any check at all.

Was it correctly understood and reported? Finley and Laughlin do not agree about what was said themselves. So it was not correctly understood by them, and as they show by their own statements, it was not correctly reported. Finley says it was *Tuesday, October 29th. Well, October 29th was not Tuesday.*

Laughlin says he don't know what day of the week or month it was.

Anderson said Humes gave him $50 and said nothing more.

Finley says Humes said he kept $10 for his fee.

Laughlin says Humes told them $10 fee was taken out for an attorney's fee, but Humes did not say he retained it as his fee as attorney.

Anderson says Humes said, "Your mail is come."

Finley says Humes said "it came *in to-day's mail.*"

Laughlin says Humes said it *came this morning, in the morning's mail.*

Finley says Humes said it would *be less under the old law.*

Laughlin says Humes said it would *be more under the old law* and less under the new. *Finley says this was all that was said.*

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Laughlin *says he asked in addition what evidence of the pension there would be, and he said his books.*

Laughlin *says it was a very brief conversation of only a very few moments. That they did not sit down. That they did not enter into any of the details.*

So it is submitted that it lacks every essential element to make it competent proof as an oral or verbal admission. And that this was a question of law for the court to determine, and if the evidence was not competent it was the duty of the court to have refused to admit it; not only so, but it was his duty to have ruled it out and excluded it from the jury. And the court erred in not doing so.

A. Finley's evidence contains nothing else but what has already been commented on. It shows he, Anderson and his son, told the same story and adhered to it for a long time—first, that Anderson paid him the money for the cow, and second, that Anderson's wife paid it, and at last, when driven to it by the production of the written receipt, that they had made an unintentional mistake in fixing it up; it read, "received of Mary Ann Anderson," and they were driven to the acknowledgement of the fact that P. Finley had all of Anderson's money and had paid his father himself out of it. That Anderson was not there at all, and that his wife had not brought over the money that morning and paid it, as all three, Anderson and A. and P. Finley, had sworn for so long. The father was trying to sustain his son in his story, but we submit, in view of his many self-contradictory statements, fell far short of it. He could not support him because the son so contradicted himself that there was nothing for him to support him in. This is the evidence of the prosecution on this claim.

Now the evidence of defendant.

1st—the witness of the law—the presumption of innocence, this court terms it, in the Coffin case, that

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must remain until it is overturned by proof of guilt beyond a reasonable doubt.

And we submit that, without more, the evidence of the prosecution is not such that it overturns this witness of the law—this presumption of innocence beyond a reasonable doubt. And we may as well also look to the proof. Anderson's pension was granted Monday, September 10, '94 —R., p. 22.

Anderson and P. Finley would like to deny this if they could, but it is record evidence and they can't, and can't change the day of the week or month or year of that by swift swearing that it was different

Defendant, R., p. 114.

I first got notice of the granting of Anderson's pension September 21,' 94—Friday. On that day I wrote him a notice about it. This went to Raleigh, Tenn., his then P. O , by Saturday, September 22, '94. He came first to my *office Monday morning, September 24, '94*, and I then told him that his papers had gone to Woodstock, Tenn , his original P. O., and on that day at his request I wrote the P. M. there to send him his papers to 17 W. Court street. He made his mark to this, and in answer, all the papers addressed to him came to that number. His voucher and pension certificate, telling him Chiles was atttorney to whom the $10 fee was due. He was again in my office and executed his voucher for $546.40 *September 28, '94—Friday.* I swore him to it, and he made his mark in the presence of two witnesses, Franklin and Bettis. I then, after placing it in an envelope with a stamp, gave it to him and he mailed it. The check is dated *October 3, '94—Wednesday.* His check and November voucher came the day he cashed it, *Monday morning, October 8, '94.* Check was $536.40. It got to the office that morning. He came about 10 or 11 o'clock, and the envelope that contained it was, at his request, opened in his presence and check fixed and given to him. I told him September 24th it had been granted, and on the 28th

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he executed the voucher. He knew it was coming and was looking for it. November 4, '94, voucher was with this check. When I opened that envelope, at his instance, I took his check out at his request, and he touched a pen and made that mark. I witnessed it myself, and a young white man in my office, Purcell, and I then gave Anderson the check. I had Sanderlin show Anderson the Mechanics' Savings Bank, corner Main and Madison. He went out of the office with Sanderlin. I did not see him any more that day. He left his pension certificate and voucher on the desk. Only took his check with him. And I put his certificate and voucher in the envelope, and put them in the desk. This was about 10 or 11 o'clock. I know Sanderlin. He is a pensioner.

Q. Did you pay Anderson any money in your office on that occasion? A. Not one cent.

Q. That was what was done in regard to this. A. That was what was done, and that was all that was done.

That check is the full amount he was entitled to, less $10 attorney fee. The amount in there was filled in in Carpenter's office.

Q. And all that you did was to assist him in endorsing the check? A. That was all.

Q. And when that was completed you delivered it to him? A. Yes, sir.

Q. And Sanderlin went with him out of your office? A. Yes, sir.

Q. What did you get for your services in regard to that check, if any thing? A. I got a notary fee of fifty cents for executing the voucher. I got nothing for the check.

When Sanderlin took the man to the bank to get the money he brought the fifty cents back to me.

I saw nothing more of him then.

He knew the amount that was coming to him.

Q. Besides the expression of amount in the voucher and that check, had you ever talked to him on the sub-

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ject prior to that time? A. Yes, sir; I talked to him; I read him the certificate that tells he was entitled to $12 a month, from October 18, '90.

Q. Had you ever, prior to that time, talked to him on the subject of about how much he would get? A. Oh, yes, sir; I told him that at the rate which they had given him it would be about $500 or $600.

Mr. Simonton: I wish you would designate the time and place of the conversation, Col. Gantt.

Q. Can you name time and place when that conversation took place? A. I recollect we talked it over fully *Monday morning, September 24th*, first time I saw him after pension was granted, and then we read and talked it over *September 28th, when he executed this voucher.* R., p, 113–7.

Q. Did you present the check of Anderson to be cashed? A. *No, sir.* R., p. 121.

Q. Did you get any of the money in that check? A. No, sir; I was brought back 50c notary fee, as I told you.

Q. I believe you have answered in regard to the payment of money to Anderson, and you answered that you did not pay him any. A. *Not a cent.*

Q. Have you now, or have you ever had, growing out of these three transactions that we have explained, any of the money belonging either to Anderson, Bloodson or Hayes? A. *Not one cent.* R., p. 122.

Q. Do you know Finley? A. Yes, sir.

Q. State whether or not Finley ever came to your office with Anderson? A. He came to the office with Anderson now and then. He left him there and went off.

Q. Did he come with Anderson on all occasions? A. No, sir.

Q. State whether or not he was in the office at the time that check was made and delivered to Anderson? A. No, sir; he was not.

Q. Was Laughlin there? You know him? A. Yes, sir; I know him. Laughlin was not there, either.

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Q. Did you pay Anderson instead of giving him that check; give him $50 in your office? A. *No, sir.*

Q. Now, state whether or not you saw Laughlin and Finley together, or do you remember about them? A. *I remember I saw them about three weeks after Anderson got his check*, I talked to them two or three moments in the back room of my office.

Q. What is Laughlin's business? A. Lawyer.

Q. Do you know whether or not he was attorney for Anderson? A. No, sir; I did not know that he was attorney for Anderson. I know that he came there and made inquiry about it, that is all.

Q. Now, at the time of that enquiry, state whether or not Anderson knew perfectly well the amount he was entitled to, and what he had got? A. Yes, sir; we had talked to him fully. (Objected to by District Attorney because witness did not know what man knew; no ruling by court.) A. I talked it over to him; I do not know anything further than that, of course.

Col. Gantt: Q. They came and talked with you? A. Yes, sir.

Q. Well, did you tell them that he was only entitled to $60 and that you were entitled to—

Mr. Simonton: Col. Gantt, I had rather you would ask him what he told them rather than to tell him what to say. I object to your leading him in that way.

The Court: You may ask it in that form. They have said distinctly that he did tell them that.

Col. Gantt: Q. Now, did you tell Finley that he was entitled to only $60, but that $10 of it was due you as your fee? R., p. 123-4. A. No, sir; they are mistaken about that. I told them—

Q. Never mind. You did not tell them that? A. No, sir.

Q. Were you entitled to any fee? A. Not a cent.

Q. Well, now, then, did you tell Laughlin, or Finley in Laughlin's presence, that he was entitled to $50,

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and you took $10 for the fee? A. No, sir. They misunderstood what I said.

Q. How long were they there? A. Two or three minutes. They did not sit down. I was busy in the front room. They came in the back room and said they wanted to speak to me, and in two or three minutes we talked, and they went out. They did not say anything to me hardly, and went off.

Q. The object of their visit was to inquire about Anderson's money, the pension that he was entitled to, and amount of it; you understood that? A. I understood that they made a casual inquiry in a general way about Anderson's claim.

Q. And you say that was *two or three weeks after he got the money?* A. *Just three weeks to a day.*

Q. You say your office was full of people at that time? A. Yes, sir; I was in the front room when they called me in the back.

Q. And your conversation lasted about the period you have mentioned? A. Yes, sir.

Q. When it was through, what did they do? A. They seemed to be perfectly satisfied and went off.

Q. Was anything said in the conversation about the old pension law, what it would allow, and the new pension law, the one under which Anderson got his pension? A. Yes, sir; I said that he got the maximum amount, $12 a month, and got it from the date of filing the application, and that was the act June 27, 1890; the pensioner got so much a month from date of filing application—in his case that would be about $550; that under the old law it would have dated back, the original pension law, to the date of the injury during the service, and in that case would be $2,000 or $3,000.

Q. How much did you tell them it was? A. *About $550. I told them $12 a month from October, '90.*

Q. What difficulty, if any, was there in getting information as to amount to which pensioner was

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entitled? A. Not a bit in the world; just to ask and they would give it to you.

Q. To what places could they write to get it? A. To Knoxville or Washington. R., p. 124.

The Court: (R., p. 125). Q. Was the fee on Anderson's check $10? A. *Yes, sir; all of these were under act June 27, '90.*

The Court: Q. If I understand you, you did not have any claim against any of these checks for attorney's fees? A. No, sir.

The Court: Q. And no claim of any kind except the fee of fifty cents, which was paid. A. That is all.

Q. I merely ask that to eliminate from the case unnecessary questions. So much has been said about fees. A. *I would like your honor to look at one of those letters showing about fee. Anderson was in my office September 24, 28, and October 8.* (R., p. 127). I don't think anybody was with him on any of these three occasions. As I said, Colonel, sometimes Finley would bring him there when I was busy and go off and leave him. Now, whether he was with him on any of these three occasions I don't recollect; and sometimes he would come down by himself, like he said.

Q. Did not he and Finley come in there early in October, on a Tuesday, and you tell them that his pension had not yet come; he would have to come back another day soon? A. *No, sir.*

Q. And did not they come back on the *following Saturday?* A. *No, sir; Anderson came on September 24, and I told him his papers were at Woodstock.*

Q. Do you now say that Finley and Anderson did not come in *there on a Tuesday in the early part of October, '94,* and have a talk with you about the pension, in which you said the pension had not yet come? A. *I said they did not come. Anderson came on the 8th, but they did not come.*

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Q. *What day of the week was the 8th.* A. *I think it was Monday.*

Q. Well, when did they come around—Laughlin and Finley—to inquire of you, did you tell them that his pension money had come that morning? A. No, sir; they are mistaken about that. I did not tell them his pension money had come that morning; I told them his pension had been granted.

Q. Did you tell them that $60 had come and that $10 was retained as attorney's fee? A. No, sir; I did not tell them that; they misunderstood me.

Q. Did you say Anderson got $50? A. I told them Anderson had got about $550; that it was $12 a month from the day he filed his application in October, 1890.

Q. Is it not true that you explained to them why he only got $50? A. No, sir; I explained why it was he got $12 a month from October, 1890, instead of from the time the injury occurred, under the old law. R., p. 128.

Q. You had Anderson's pension certificate at that time? A. His pension certificate and November voucher were sticking in the desk all the time.

Q. Why did you not give him the certificate when they came? A. Laughlin just asked me what evidence they had and I told him the papers in the office.

Q. Did you not tell them "my books will show?" A. No, sir; I told him the old man's papers were there in the office. Laughlin was mistaken about that. His certificate and voucher were there in the office sticking in the desk.

Q. Did you tell them that the old man had got his check and you had sent Sanderlin with him to the bank and he had drawn his whole money? A. I don't remember that I entered into that part of the details. We had a casual conversation of a few minutes standing in the back room.

Q. It was, however, about Anderson getting $50,

and they wanted to know why he did not get more? A. They did not tell me that; did not ask me why he did not get more. They made a casual inquiry of me as to what Anderson's pension was.

Q. What do you mean by "casual?" Did they have any other business at your office? A. Not that I know of.

Q. They had just walked down there to have a casual conversation—to make a casual inquiry of you? A. They called me and talked to me five or ten minutes in the back room.

Q. That was the only conversation they had with you about Anderson's pension, was it? A. Yes, sir; they asked me about Anderson's pension and I told them he had been granted $12 a month since October, 1890, and got about $550, and his papers were there in the desk; that was the expression I used.

Q. This Anderson check for $536.40 appears to be witnessed by yourself and Purcell. Who is Purcell? A. He was a young white man who was in my office at that time.

Q. Where is he now?—R., p. 129. A. I don't know, sir. I have been trying to find his whereabouts, but I have been unable to do so.

Q. Has he been subpœnaed as a witness? How long has he been away from Memphis? A. I did not know he was gone until I went to make inquiry about where he was.

Q. What was he doing in your office? A. Learning typewriting and shorthand.

Q. Anything out of the usual way about it? A. Nothing that I recall just now; nothing that I remember just now. I will frankly tell anything that I recollect, but I do not recollect anything unusual about it.—R., p. 135.

And in every single word that the defendant or plaintiff in error says, besides being exactly corroborated

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by every witness of his own, and all the pension certificates and checks, and all the bank records, and by Anderson, Finley, Laughlin and Bloodson in many things, J. J. Murphy, government witness, R., p. 54-7, corroborates defendant in everything as to check, voucher, etc.

Franklin (c), R., p. 136-7. I recognize my signature there, and see Anderson's mark. This is a voucher. for $546.40.

Q. Looking at it and your signature, do you remember whether Anderson in your presence put his mark to that paper? A. He was right there. I know him.

Q. You find it was subscribed and sworn to September 28th. A. Yes, sir.

Q. From looking at that paper and remembering Anderson, I will ask if you witnessed his signature? A. I did, sir. I know him when I see him. He is a ~~Lamar~~ dark man.

Q. At the time that he put his mark on that paper and you witnessed it what was done if anything to make Anderson understand it? Was it read to him or not? A. It was read to him by Mr. Humes.

Q. Do you know who the other witness on there is—Bettis? A. Yes, sir; he is a tailor. I know him when I see him. A white man. His tailorshop was just across the hall. There was a little hallway there.

Q. Was he present when Anderson signed his name? Bettis was standing there too? A. I think he was, as far as I can recollect.

Q. I understood you to say that this paper was read over to Anderson by Mr. Humes. A. It was.

Q. The amount of money and all was stated in it? A. Yes, sir.

Q. I was asking you to examine a check; you had stated, I think, that the check was payable to Anderson and that it was for $536, or some like amount. Now, you said that you remembered Anderson. A. Yes, sir.

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Q. Just tell the jury in your own way what, if anything, you know about Anderson in connection with the check I handed you at the hour of recess. A. Well, I was in the office at the time, and I was called on to attest his signature to his voucher, and when voucher went and he returned he brought it to the office to Mr. Humes, with his check in it, and got Mr. Humes to fix up his check, and he left there with his ~~his~~ check. When he went out of the office Sanderlin went with him. Sanderlin waits on Mr. Humes. The last I saw of Anderson he went out of the office with Sanderlin, with the check in his hand. That day I saw him no more. I have seen him several times since. R., p. 141. Every time I signed a check the man was right there present.

Q. I did not ask you that. I was not doubting that. Now, sometimes it was a woman wasn't it? A. Yes, sir. R. p. 145. Mr. Humes always signed with me, and the person was always there to attest it.

Sanderlin (c.), R., p. 152.—I am a pensioner. I know Anderson; knew him in the army. Was on guard with him. In October, '94, Mr. Humes give him a check and I went with him and showed him the Mechanics' Savings Bank, corner Main and Madison. It was about 11 or 12 o'clock. Anderson and Mr. Humes both requested me. Anderson didn't know where the bank was. He had the check. He went in the bank before. I showed him where it was and went right in behind him. He just handed the check to Mr. Young Humes and he asked him "what's your name?" and he says "Wm. Anderson." He says, all right; and he looked at me, and I says "yes, sir, it is Wm. Anderson." And Mr. Young Humes paid him. The brother of defendant. He stays in the bank. Wasn't in there no time. Anderson went down Main street and I went back to the office. I got 50c. and I give it to Mr. Humes when I got to the office. I didn't get any more, not a nickel of that—R., p. 153–4.

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W. Y. C. Humes, R., p. 160.—I am cashier of Mechanics' Savings Bank. Am half-brother of defendant. Anderson's check was cashed at the bank. Nothing on the face of the check shows the date it was cashed by the bank, but the bank books do. Anderson check is entered on books of the bank October 8th. I paid it to Wm. Anderson, a colored man. I am sure I paid it to Wm. Anderson. Wm. Anderson came in with the check to the bank on October 8, '94, and I asked him "what is your name?" He answered, "Wm. Anderson." Sanderlin was there, and I said "Sanderlin, is this right?" He said "yes, sir." And then I paid Anderson the check. I am positively sure I did not pay the check to a white man. I did not pay it to Sanderlin. I paid it to Anderson. I have seen him lately. I saw him in this court-room week before last. I recognized him as the man I paid the check to on October 8th. He said his name was Wm. Anderson, and Sanderlin identified him. The amount of that check is $536.40. I paid him the whole of the money, with the exception of the exchange; 25c. on the $100. It was all paid to him, with that exception. That check is entered on the bank book, Check No. 743,149, dated Knoxville, Tenn., October 3, '94, drawn on Assistant Treasurer United States, New York. The check was endorsed by Wm. Anderson, his mark witnessed by L. W. Humes and G. H. Purcell. Bank endorsed it to our correspondent in New York. After I paid it to Anderson I put it in my cash drawer. Entered it upon my cash-book, then entered it in my collection register, then wrote a letter to New York, and sent it to them there. I had advice from them that it was paid.

Q. Were your entries of even date with that? A. Yes, sir. (Read) "D. A. Carpenter, apc. Wm. Anderson, collected of Assistant Treasurer, New York, date of check October 3, '94; sent to National City Bank, N. Y., $536.40." I can't carry all the checks in my head. I have a record. Nine pages intervene between the entry October 8th, de-

scribing Anderson check, and December 24th, describing Bloodson check. Thirty-eight different checks are described on each one of those pages. The entries in regard to Anderson check were made on the same day with the payment of the check.—R., p. 164. Well, I recollect the payment of the check of Wm. Anderson in this way. I recollect that a negro man came in there and got the money, and I have seen Anderson and I recollect Anderson as the man that did it. I remember it because Sanderlin brought the man in there, and I have seen Anderson since, and I recognize Anderson as the man, and it made an impression on me because it is a very large check to pay to a negro. Sanderlin brought a number, but not a number of that sized checks, to be paid. I say I have seen Anderson since and I know I do recognize him. Then I positively recognized him.

On Bloodson matter you have

Bloodson (c),

F. and A. Snyder, and Copely (c).

For defendant you have

First. The witness of the law—the presumption of innocence,

Defendant,

Pension certificates,

Vouchers,

Checks,

Franklin (c),

Sanderlin (c),

W. Y. C. Humes,

Bank records and evidence, and

L. C. Humes.

Bloodson, R., p. 58.

Q. And you got how much?

A. "Mr. Humes comes out the door as you comes in this room whar I was, an' next to the door as you go down stairs, an' he says

here Uncle Isaac, here's $5."

A. $50. "I said, Mr. Humes give me $5."

Q. How long was that after Christmas after you got your $507? A. I reckon that was on—let's see—. R., p. 62.

Q. When did you get it—the first you got? A. Well, ~~as nigh~~ *as nigh as I can ricollect*, the fust I got I got it Mr. Humes 'long in *Christmas week*.

Q. Whereabouts was his office then? A. His office was down here on this street, facin' court square.

Q. On the street running to court square? A. Yes, sir.

Q. Do you know what they call the street? A. No, sir; I don't know what they call it; *at least, I don't know none the streets*.

This is given as a fair test of the intelligence of these prosecuting witnesses. Just like Anderson, not of sufficient intelligence to know any street of the city where he lives. And it is this glaring lack of intelligence that the learned trial court told the jury was of course a minor matter. And yet witnesses like these, who show they have so little intelligence that they don't know the streets of the place where they have lived over thirty-one years, they claim to fix on and know and remember a day of a week and a month, and swear to it, and we are asked to believe they are telling the truth. That they know and are speaking the truth. And the trial court charged the jury that if in such sworn evidence as this these witnesses differed—contradicted each other—as to these dates and days of the week and month, that it was an immaterial difference to which the jury should give no consideration. In short, that the jury must convict whether the prosecuting witnesses were intelligent or not—whether they contradicted themselves or not. And even if the wit-

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nesses of defendant were intelligent and had the sworn vouchers of these people and checks and bank records that fixed the dates and days of the week and month. In other words, told the jury to believe the ignorant witnesses of the prosecution, and to convict on their evidence if they contradicted each other and did not know the dates and days of the week and month or year; and to convict and disbelieve the evidence of defendant's witnesses, although they had record evidence that showed the dates they swore to were true. The vouchers, sworn statements of the prosecution's own witnesses, and the checks and bank records.

Bloodson says, "I took an' fotch my mail to Mr. Humes. R., p. 58. I did some plowing and planted out some trees Monday before Christmas. I can't read or write. Mr. Humes did not say whether what he gave me was all that was coming to me. When he paid me the money, nothing was said between me and him whether that was all, or whether that was right or not.

Q. When did you file your application for pension? A. I don't know nothin' at all 'bout that.

Q. You don't know how long ago it was? A. No, sir. R., p. 61.

Mr. Humes said, "I wouldn't take a five cent of it to save my life." Well, I told Mr. Humes that I didn't say that he would. R., p. 62.

The Court: Q. What was it Mr. Humes said? A. Said he wouldn't take a five cent from me to save his life. I said, "Mr. Humes, I didn't say that you would."

I reckon a little over six feet. My hair and beard are white.

Q. Do you feel any certainty about it—about when you went there—to Mr Humes' office, when you say you got money? A. I had no recollection 'bout what time or what day it was, only I know it was 'long in the Christmas week.

Q. Don't you know that you were there the day be-

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fore Christmas? A. *Well, I might have been there the day before* Christmas, lookin' for a letter.

Q. You did not say anything to Mr. Humes about not getting enough money? A. I didn't say anything to him 'bout gettin' any money at all.

Q. When he handed you the $50, why didn't you say, "This is not all that is coming to me"? A. I don't know.

I didn't have time to count it.

I get pay from the time I put in my papers. Several hundred dollars.

Q. You knew all that before Mr. Humes handed you $50, because Copeland had already told you? A. I know Copeland say if I put in for old claim, that ought to be the rise of four or five hundred dollars comin' to me.

Q. And you knew that, and when Mr. Humes handed you $50 why did you not say to him, "I was to get the rise of four or five hundred dollars"? A. I wasn't to contradict his word. He was put there to do my writin'.

Q. Why did not you say something to Humes about it then? A. No, sir; I never said nothin' 'tall to Mr. Hume 'bout it. I never had no argument with him.

Q. Why did not you come back and tell him this was a mistake this time? A. I just thought he knowed his business, an' I put him there an' give him the papers for to do right by me. He knowed how much was comin'.

Q. Why did not you come back to him and tell him? A. Oh, no, sir; I can't argy with white folks that a way.

Q. Did not you know there was over $500 coming to you? Copeland told you that. A. He told me ought to be; he didn't say how much a month.

The day before Christmas, December 24, '94, Mr. Humes did not hand me that check and I did not make my mark. I did not make my mark on it. Franklin

did not witness it. I did not go out of Mr. Humes' office with Sanderlin and go to the Mechanics' Savings Bank, corner Main and Madison streets, and hand that paper to the cashier. (R., p. 65.) He did not count out to me $567.25 and hand it to me. That was not Monday of last Christmas week. The cashier did not say anything about that being a big amount for the day before Christmas. Not a thing of that sort happened. When I went back to Mr. Humes and asked him for my papers he gave them to me. I never told about having that letter written on the former trial. R., p. 67.

Q. You just took the money he handed you and never knew how much it was? A. No, sir; never noticed how much it was; just crammed it down in my pocket and never took it out.

Q. You can tell figures when you see them? A. Oh, no, sir; I don't know nothin' 'bout no figgers.

Q. And this money was in bills? A. It was that.

Q. If you can't tell figures, how can you tell how money is on the bills? A. That's what I tell you, didn't know figgers, didn't I?

Q. How can you tell money? A. If you give me this here silver I can tell. I can tell, sort o' 'bout a $5 bill if you give me that.

Q. Was this he give you in $5 bills? A. I never looked at it.

Q. And you did not try to count any of this, though you had all that day to do it in?

Q. So you knew you had not got enough then? A. Yes, sir.

Q. And you never said a word? A. No, sir; only to ask people to try and give me some understandin'.

Q. Your feelings were hurt that very day because you thought you had not got as much as you ought to have had. A. Well.

Q. And did not say a word to Mr. Humes? A. No, sir; I didn't cross no word with him at all; just thought

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he knowed his business, an' I put up with what he give me.

Q. When I was asking you why you did not say anything to Humes whether you had found out or not how much money was coming to you, didn't you tell the jury about fifteen minutes ago that when Deadrick made out your papers he did not tell you how much was coming to you, but that before you ever got any money from Humes, and when you went to Copeland, he told you it was the rise of $400 or $500 that was coming to you? Did not you just tell the jury that Copeland told you before you ever went to Humes that the rise of $400 or $500 was coming to you in pension money?

The Court: Well, can you answer that?

A. *Squire, they has kind o' done me up.* You must give me a chance to study about it.

The Court: Was your conversation with Copeland about it before or after you got the money from Mr. Humes? If you cannot answer it, say so. A. *I aint gwine to answer that question, boss.*

Bloodson contradicts himself and says he was at Humes' office the day before Christmas. But he says to get a letter. He denies he got the check, denies he signed a voucher. Says he came on December 27th and got, he says, twice, $5, and once $50, and the questioner says $507. Says he worked all day before Christmas plowing a little lot 55 x 104 feet, and planting out some few little trees. Defendant has many witnesses to show the contrary. Two are introduced to support it is called Bloodson. They do not claim to have been with him when he signed his voucher. They say he was doing the work stated the day given. One says she counted the $50 Bloodson had December 27, '94. These two so-called supporting witnesses of Bloodson are F. Snyder. (R., p. 70–4.) She shows that she pretends to claim she knows by killing a hog. But without commenting at any length on her evidence it is submitted that the cross-examination

shows she knows little or nothing, and completely demolishes her theory of remembering it from killing a hog. It demonstrates that about all she could remember was killing the hog. And A. Snyder, her daughter. (R., p. 74–8). She undertook to say she saw Bloodson all day plowing a 55x104 feet lot and planting some few little trees. She had nothing to remember it by, and it is submitted that the cross-examination demonstrates there is nothing to support her. Copely (c) (R., p. 79), says, December 29, '94, he counted ten $5 bills for Bloodson. "Now, when I was writing for him, I received a letter along in June, '94, that his claim was allowed, and at that time he asked me about how much did I think he would get. . . . And I *told him that if he drew from the time that his claim was filed up until then he ought to get in the neighborhood of five or six hundred dollars.* R., p. 81.

Q. *He certainly understood all that, and certainly understood from you, way back yonder in June, '94, that he was going to get five or six hundred dollars if it was allowed?* A. *Yes, sir.*

Q. *And you had found out that it was allowed and told him so?* A. *I did.*

Q. There is a lot of other pensioners here of his race besides Bloodson—colored people? A. Yes, sir.

Q. And there was nothing to keep the old man from knowing? You had explained everything to him; how much was coming to him and all? A. *I had explained everything to him.*

Q. That was the way the pension was allowed? *The rate per month $12?* A. *It was $12 per month.*

Q. *Well, he had his voucher in his hands?* A. *Yes, sir.*

The old man had set down White Haven as his residence first. He did not get his pension certificate in '91; it went to White Haven and got lost. This is all the prosecution's evidence. Defendant. (R., p. 117).

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Bloodson's certificate was *issued December 11, '91.* He swore it was lost. In case of loss he has to make application for duplicate. This was his case. He applied for duplicate and got it. I swore him to the application. In case of loss, before duplicate issues, permission is given to draw without it. He made first draw on permit. I wrote his statement, it was lost, and request for duplicate and permit to draw. Permit was sent him and certificate afterwards.

Q. Did you do these things as attorney? A. *I did them as United States Commissioner. I simply administered the oath according to form sent him by Carpenter, agent at Knoxville.*

Q. Did you get anything except the notarial fee? A. *Not a cent.*

Q. *Did you get any pay whatever as attorney for the prosecution of these claims?* A. *Not a cent.*

A. *Powers got fee in Bloodson's case; his name is on the voucher. Fee was sent to him. $10, act June 27, '90. The whole of Bloodson's money was $577 20 and $10 off attorney's fee. His check was for $567 20. He received a voucher and a permit to draw from Carpenter.* The original papers went to him at White Haven and were lost. This came to him through the mail in an envelope addressed to him at 17 W. Court street, at his request. When it came, as soon as he came in the office the envelope was opened at his request, in his presence, and he executed that voucher that you have before you. The voucher is the same as the others. It names a different man. The rate is the same. The amount is different, and executed differently. Bloodson made this *December 10, '94,* and it shows where I certify that he has his certificate with him that is erased, showing that he drew on a permit. The amounts were filled in at Carpenter's office at Knoxville. That paper came with those amounts filled in. I read this paper to him; he touched the pen and I made his mark there to the affidavit and receipts.

Franklin and Maynard witnessed it. Bloodson was aware of the contents of that paper. I read it and permit to draw to him at the time it was executed. The entire paper was read to him.

Q. *Is there anything on the back of that paper as to the calculation?*—R., p. 119. A. *Yes, sir; it is the same thing. It is made on them.*

Q. *Where was that made?* A. *At Carpenter's office at Knoxville. I am clear and distinct in my recollection that Bloodson knew the contents of that paper.* I read it to him, explained it to him and talked it over to him. When I had thus completed the paper and it was written with the permit to draw pinned to the face of it, it was put in an envelope addressed to Carpenter, Knoxville. The response was to come to him at 17 W. Court street. Yes, sir; Bloodson knew it was to come. He asked that it come that way. He took the letter and mailed it with the contents spoken of. The papers came in an envelope through the mail addressed to him to 17 W. Court street, and I saw them next on the morning of December 24, '94. And he was there during that day. When he came I told him the envelope was there, and at his request and in his presence I opened it, and it contained that check you have there for $567.20 and the voucher for February. The attorney's fee went to Powers, New Orleans. I know nothing more about its going to Powers *than the voucher shows.* I know I did not get it. The letter of the *Commissioner notified that Powers was attorney, and check was sent to him.* I wrote Bloodson's name on the back of the check and let him touch the pen to make his mark, and I witnessed it with Franklin. After I had done that, the check was delivered to Bloodson, and Sanderlin was sent to show him the bank.—R., p. 121.

Q. Did you go along? A. No, sir.

Q. Did you get any money at all in that check? A. Sanderlin brought me back a notary fee, 50 cents.

Q. With the exception of that did you get one cent of that money? A. Not a nickel.

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Q. Did you see Bloodson again that day? A. No, sir.

Q. Did you present that check to be cashed, and got none of the money? A. No, sir.

Q. Did you pay Bloodson any money in regard to that transaction in your office. A. Not a cent.

Q. Have you now, or have you ever had, growing out of these three transactions, any money belonging either to Anderson, Bloodson or Haynes? A. Not one cent. R., p. 122. *It is notable that the District Attorney didn't cross-examine defendant on Bloodson's claim at all.*

Franklin (c) R., p. 139. Q. Are you acquainted with or did ever meet or know Bloodson? A. Yes.

Q. What sort of looking man is he? A. He is about six feet tall, and has grey beard and hair.

Q. Look and state whether your signature is on that voucher? A. Yes, I witnessed his mark on this paper. I was present when he made it. The other witness is Maynard. It is $567.20. I know him, he used to be a deputy sheriff. We were both present and saw Bloodson make his mark. I say this looking at that signature and seeing mine there.

Q. Gentlemen of the jury, I would like for you to examine this. You have already probably looked at it. It has been in evidence. This is Bloodson's check for $567.20. A. I and Mr Humes are the witnesses to Bloodson's mark on the back of that check He was there and made his mark, and I witnessed it on this check, dated Knoxville, December 16, 1894. He took the check and went away with it on December 24th out of Mr. Humes' office. I did not follow him, or go any where with him. R., p. 139. The voucher was read to Bloodson. Oliver is the other witness. He was office-boy of Mr. Parker, whose office was adjoining Mr. Humes at that time. He is 20 years old and my color. R., p. 140. *It is noteworthy that the District Attorney asked this witness nothing in*

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cross-examination about Bloodson. Showing, we submit, that he thought nothing of this charge.

Sanderlin (c) R., p. 154. I know a pensioner named Bloodson—an old white-headed and whiskered man. About six feet high. In Christmas last year I went with him to show him the Mechanics' Savings Bank. He went in and they paid him. Mr. Humes, the cashier, paid Bloodson the money on his check. He gave Mr. Humes the check. I identified him. After Bloodson got his money he came out and went on down the street.

The District Attorney asks this witness nothing on cross-examination about Bloodson, indicating that he himself abandoned any idea of a conviction on Bloodson's claim.

W. Y. C. Humes, R., p. 162. I know a man named Bloodson. A tall, black negro, with grey hair and whiskers. I paid that check to Isaac Bloodson in the Mechanics' Savings Bank. I have a record of that check here. I can't carry all the checks in my head: December 24, 1894. Check No. 791,759; drawer D. A. Carpenter, account Isaac Bloodson. Mark witnessed by L. W. Humes and Franklin. Drawn on Assistant Treasurer United States, New York, December 16. Sent National City Bank $567.20. Sanderlin came with Bloodson. Well, he is a peculiar looking negro and he came in the bank on Christmas eve, in the afternoon, and I paid him over this $560, less the exchange, and I joked the old man about having so much money on Christmas eve. I am sure it was Christmas eve. I have seen him since. I have no doubt about his identity. I recognize him very readily. Nine pages intervene between the entry of Anderson and Bloodson's checks; thirty-eight checks on each page The entry is made the same day of the payment of the check. *The District Attorney asks this witness about Bloodson.*

L. C. Humes, R., p 180, son of defendant. I saw Bloodson at my father's office December 24, 1894. *District Attorney asks him nothing.*

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The first error that appears on the face of this record was the court's refusal to quash the indictment.—R., p. 89.

This is one of the grounds upon which this case is asked to be reversed and remanded for a new trial and the judgment set aside because the indictment is not valid, for the reason that defendant did not violate, nor is he within the provisions of the statute named (section 5,485) on which the indictment is found. But if any law of the United States has been violated by him (which is denied), or to which he is amenable or within whose statutory provisions he is, it is section 4, act June 27, 1890, 26 stat., 182, c. 634. In other words, he stands charged with a violation of the penal section of the general pension law of July 14, 1862. And he stands with a judgment against him, upon proof, showing, if any statute has been violated, it is the penal section of the invalid pension act of June 27, 1890. If charged with a violation of one act, can he be punished, on proof, showing, if any, a violation of another act? If charged with committing the offense of larceny, can he be punished on proof showing the commitment, if of any offense, of embezzlement? We submit not. The rules of law that govern and control this proposition we find thus stated. It is axiomatic that statutes creating and defining crimes cannot be extended by intendment, and that no act, however wrongful, can be punished under such a statute unless clearly within its terms.

"There can be no constructive offenses; before a man can be punished, his case must be plainly and unmistakably within the statute." Todd v. U. S., 158 U. S., 252.

The elementary rule is that penal statutes must be strictly construed, and it is essential that the crime punished must be plainly and unmistakably within the statute." Ballew case, *supra*.

United States v. Benecke, 98 U. S., 447. "He was

indicted in 6th and 10th counts, charging him with unlawfully withholding arrearages of pay and bounty from persons for whom, as agent and attorney, he had collected the same from the United States. The jury found him guilty; and on motion for new trial and arrest of judgment, the judges certified questions of law to this court on which they differed, as applicable to the case. The first of these is thus stated: Is wrongful withholding back pay or bounty by an agent or attorney from claimant, an offense under section 13, act July 4, 1864 (13 stat., 389), or under section 31, act March 3, 1873 (17, stat. 575), section 5,485. The act of 1864 is entitled an act supplementary to an act entitled an act granting pensions, approved July 14, 1862.

It consists of ~~thirteen~~ 15 sections, the twelfth of which is devoted to prescribing specifically the compensation of agents and attorneys for procuring the allowance of pensions and bounty, or other claims, under the act; and thirteenth section to prescribing a punishment for violation of the twelfth. There is here no provision in regard to services for procuring pay, nor any provision in the act in regard to it. The pensions to soldiers, their widows and orphans, is not pay, and the provisions for paying them are not under that act. Arrearages of pay were not collected under any pension law, or through the pension office. What is meant by bounty here is said in the briefs to be also passed upon and paid in another bureau. The indictment is perhaps on this point a little obscure. In sixth count defendant is charged as guilty of withholding arrearages of pay and bounty and in withholding pay and bounty. "Since the act in which this offense is described makes no provision for pay or bounty, and the fees regulated and acts forbidden are those done in regard to that act, it seems a reasonable construction of the penal part of the statute that withholding pay and bounty, which are not mentioned there, are not intended to be punished by the act.

It is not in reference to pay that Congress was legislating." The persons described who may be guilty are those prosecuting claims for pensions or bounty before the Pension Office. The offense described is "withholding from a pensioner or other claimant the whole or any part of the claim allowed and due said pensioner or claimant," and it is but a just limitation of the word "claimant" that he should be a claimant under that act, a claimant before the Pension Bureau. This part of the section is to be taken in connection with the taking of illegal fees, which manifestly refer to cases before the Pension Office, and which are described and punished in the same sentence and by the same penalty. The word "bounty" is not used in this sentence, nor the word "pay," but the argument is that the word "claim" includes them. We think this would be an unjustifiable extension of a penal statute beyond its terms and against its purpose.

"The first question is, therefore, to be answered in the negative, *and we need not inquire if the statute was repealed, since the offense described in the indictment is not within it.*

"The offenses in this indictment are said to have been committed in 1888. *The law then in existence did not make the act charged a crime.* It is argued by counsel that withholding the money due is a continous offense, and if the same money was withheld after the act of 1873, did make such withholding punishable, the indictment is good under that act. But without deciding here how far the withholding of the money, under a law which made that an offense when the wrongful withholding began, can be he held to be a continuous offense, *we are of opinion that it would be a forced construction of the act to hold that it was intended to apply to a case where money had already been withheld five years when the statute was passed. The party might very well be criminally wrong in failing to pay when he received it; but Congress could hardly be supposed*

to intend to punish as a crime his failure to pay afterwards what was in law but a debt created five years before."

U. S. v. Irvine, 98 U. S., 450.[e] Defendant is charged in indictment, that on December 24, 1870, as agent and attorney of Berkley, he wrongfully withheld from her amount of her pension, i. e., $525 allowed her under pension laws, and continuously withheld it until finding indictment September, 1875. Indictment comes within terms act 64, which we considered in Benecke case *supra*. But the judges have certified among others whether act July 8, 1870, does not repeal 13th section act 64. *By third section latter act, pensions are forbidden to be paid to attorneys and agents any more, and are required to be paid directly to the pensioner. It is not easy to see, therefore, how the attorney is to get possession of the money, and how he can withhold it, or why there should be any longer a law for punishing him for such withholding.*

[e] The statute revises act 64 as regards fees of such attorneys, and increases the punishment for exacting more fees than the law allows, but totally omits any penalty for withholding. Secs. 7 and 8, act July 8, 1870, 16 Stat., 195. It is argued that this omission was intentional, for the reason above stated, and as the statute repeals all acts in conflict with its provisions, it was intended to repeal the penalty for withholding prescribed by the act 64. The argument is not without force; but without deciding that point, we prefer to answer another question, which will decide the present case. It is not very easy to define for all purposes what constitutes under the statute a withholding of the pension. It cannot commence, of course, until the money is received by the party charged. Nor then, unless there is a duty of immediate payment to the pensioner. A reasonable time must certainly be allowed for this. What this is must depend in each case on its own circumstances. A refusal to pay on demand without just excuse would constitute withholding at once. Such delay as would show an intention to evade

payment would constitue a withholding. *If there is nothing but careless delay, the party might hold the money for some time without incurring this severe penalty of two years imprisonment. In short, there must be unreasonable delay, some refusal to pay on demand*, or some intent to keep the money wrongfully from the pensioner, *as would constitute an unlawful withholding in the meaning of the law.* But whatever this may be which constitutes the criminal act of withholding, it is a thing capable of proof to a jury, and which, when it once exists, renders the party liable to indictment. There is in this but one offense. When it is committed, the party is guilty, and is subject to criminal prosecution, and from that time also the Statute of Limitations applicable to the offense begins to run. It is unreasonable to hold that twenty years after this he can be indicted for wrongfully withholding the money, and be put to prove his innocence after his receipt is lost, and when perhaps the pensioner is dead; but the fact of his receipt of the money is matter of record in the Pension Office. He pleads the statute of two years, a statute which was made for such a case as this; but the reply is: You received the money. You have continued to withhold it these twenty years; every year, every month, every day, was a withholding within the meaning of the statute. We do not so construe the act. Whenever the act or series of acts necessary to constitute a criminal withholding of the money transpired, the crime is complete, and from that day the Statute of Limitations begins to run against the prosecution. In the case before us the judges certify that it appeared on the trial that the pensioner demanded her money of defendant December 24, 1870, and he refused to pay her, and had never paid her up to the finding of the indictment, September 15, 1875; that he requested the judge to instruct the jury to acquit him, because the offense was barred by the Statute of Limitations, which the court refused to do. We think the statute (Section 1044) was a bar, and we say in an-

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swer to question 2, that the crime, as shown in this case, was not a continuous one to the time of the indictment; and to 3, that the Statute of Limitations constitutes a bar to this prosecution.

Frisbie vs. United States, 157 U. S., 167, in part involves a construction of section 4, act June 27, 1890.

The general pension law was passed July 14, 1862, section 4692 *et seq.*, and amended from time to time. It provides that if a soldier was injured in the service and line of duty during the war of 1861-5, he shall be pensioned, or his widow, etc. It fixes the fee of the agent, attorney, or any other person at not more than $25 in case where fee agreements are filed in Pension Office, and at $10 where no such agreements. It fixed the penalty for the violation of any of the provisions of the act, and section 5485 is an amendment of that part of it. The pay of this pension began from the date of the injury during the war. The rate was from $2 to $72 a month.

June 27, '90, the new Invalid Pension Law was passed. It provides that any soldier in the late war who is now in any way disabled for the performance of manual labor in a pensionable degree, without being an injury received in the service, &c., he shall be pensioned, and his widow, &c. It fixed the penalty for violating any provisions of the act. This pay commenced from the date of filing claim. The rate was from $6 to $12 a month.

Under the general law the pensioner's first pay might be more than $3,000.

Under the new law it could not be more than several hundred.

As this record shows, Anderson and Bloodson were given their pensions under act June 27, '90. This act created a new class of beneficiaries upon the Government's bounty; parties that theretofore had no claim on the Government, and no rights as to it by reason of their having been soldiers and fought in its defense. The act, too, created a new class of offenses heretofore unknown to

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the law, and that were no violation of any law of the United States until it passed and became a law. Not a single qualification which gave a person a pension under the general law was necessary to obtain one under the new. And a person who obtained a pension under the new law had not a single requisite that would entitle him to a pension under the general law. Two entirely separate and distinct classes of persons by those two laws were made beneficiaries of the Government's bounty, and two as widely separate and distinct classes as it was possible in the exigencies of such a case to make laws with such widely divergent provisions and qualifications and yet aiming at the same common object, namely, to benefit the soldiers of the war. The fee under the general law was nearly three times what it was under the new. The pension under the old law was usually ten times what it was under the new. Anderson and Bloodson, this record shows, are pensioners under the new. It is that alone under which they have any claim or right. They have not a single requisite which would entitle them to a pension under the old law. They were not disabled by any injury received in the service and line of duty during the war, and do not claim to. Their rights rest alone upon the fact that they are totally disabled for the performance of manual labor by disabilities which were not received by them in the service and line of duty during the war, but which were incurred subsequently.

Is it not true on the facts stated that the offense sought to be punished in the case at bar is plainly and unmistakably without the statute whose penalty is sought to be imposed for the alleged offense. It is plainly and unmistakably outside of the statute 5485. And if any United States statute has been violated and offense committed, it is plainly and unmistakably within the provisions of the statute sec. 4 act June 27, '90. Sec. 5485 was passed nearly 20 years before act June 27, '90, and has no earthly connection with it. On the contrary they

stand upon the United States statute as two entirely separate, distinct and independent acts of Congress as it is possible to find, and with as widely varient requisites as can be found, providing for two as entirely separate and distinct classes of persons as can be thought of; as separate and distinct as if one was for the white soldier and the other for the black. The act June 27, '90, is in no sense of the word an amendment of the general pension law. It is not possible for it to have been so. Not a single thing germane to the old law is in the new. They are separate, distinct and independent laws of Congress. They provide for two as separate and distinct classes of persons as though the one was for the white man and the other for the Indian. There is nothing in common in them both, except that the rate in each case depends upon the medical examination of the United States Board of Surgeons; and yet in this the very widest difference is shown, because under the old law the soldier must prove that his injury was from army service. Under the new law it can be an injury not of army service. True, the penalty for the violation of each act in its general terms and wording is the same, but the two offenses as violations of the two different acts are as entirely separate and distinct as though one were the charge of larceny and the other embezzlement. Although the words of the two statutes fixing the penalty for the violation of the two separate and distinct laws be the same, the ingredients which go to constitute, or rather from which the beneficial interests arise, are as entirely separate and distinct as where the offense is in one case larceny and the other embezzlement. It is essential to constitute the crime of larceny that the real owner must have been deprived of the possession of the property alleged to have been stolen in such a way as to amount to a trespass by the taker. While on the other hand, in the crime of embezzlement, no possession of the owner is violated: the embezzler has in his own possession the

property charged with the safe keeping thereof. If the terms of punishment for both are the same, it is totally immaterial; the essence of the crimes is entirely different—entirely separate and distinct. So in the case at bar—the essence of the two laws is just as different as they are in the cases of larceny and embezzlement. Under the old law it must be a war service injury in order to give a pension. Under the new law it need not be an injury that was of war service origin, but the soldier must have been honorably discharged from the service.

Defendant cannot be legally indicted or punished for an offense under an act under which the two pensioners, Anderson and Bloodson, had not been granted pensions and had no claim or rights. As said in Benecke case: "It is but a just limitation of the word claimant that the pensioner must be a claimant under that act, a claimant before the Pension Office."

Again the court erred in refusing to quash said indictment, and upon which this case is asked to be reversed and the judgment arrested and a new trial granted, is because said indictment is bad for duplicity in that it charges two separate and distinct offen-es against two entirely separate and distinct persons. In other words, it charges the wrongful withho'ding of money from two persons, Anderson and Bloodson.

See McElroy v. U. S., 164 U. S., 76, cited before.

Pointer v. U. S, 151 U. S., 396, Mr. Justice Harlan: "While recognizing as fundamental the principle that the court must not permit the defendant to be embarrassed in his defense by a multiplicity of charges embraced in one indictment, and to be tried by one jury, and while conceding that regularly or usually an indictment should not include more than one felony, etc."

Again the trial court erred in denying defendant the number of challenges to which he was entitled by law. Sec. 819, Rev. Stat., provides that in all other cases, civil

or criminal, each party shall be entitled to three peremptory challenges. Defendant was put upon trial in legal parlance in three cases—to answer three separate and distinct charges on the last trial and the one now before the court for review. One case was Anderson, second Bloodson, and three Haynes. So he submits that under said section when he was put upon trial he was entitled to three peremptory challenges in each one of said cases—nine in all. He asked this of the trial court and it was refused, and is now submitted as error for which this case should be reversed, judgment arrested, and new trial granted. In the course of impaneling the jury, defendant challenged three persons peremptorily and afterwards challenged Shepherd, but the trial court held that he was entitled to only three peremptory challenges, which he had exhausted, and overruled the challenge, to which action of the trial court exception was duly taken. Shepherd was then sworn on the jury and sat as a member thereof on the trial If defendant was entitled to nine peremptory challenges, six persons unlawfully took part as jurors in his conviction. This is following the reasoning in Harrison v. U. S., 163 U. S., 140, by Mr. Chief Justice Fuller, where in a somewhat similar case the court say, "Counsel for the Government admits that the errors assigned in respect of the action of the court in overruling these challenges are well taken. We concur in this view. Reversed and cause remanded with directions to set aside the verdict and grant a new trial. In that case five persons were likewise separately challenged peremptorily, the challenges overruled, exceptions taken and they served on the jury. In the case at bar Juror Shepherd was the last that it took to make up a jury of twelve, and so he was the only one who was separately peremptorily challenged and the challenge overruled and exceptions taken and he served on the jury.

Juror Shepherd unlawfully took part in defendant's conviction upon this further ground because he had

formed and expressed an opinion of the guilt or innocence of the accused from having talked with one of the jurors of the first trial of this case. He was therefore challenged for cause. And this ground of challenge overruled also by the court. And for this reason, too, defendant asks that he be granted a new trial and said judgment set aside.

ASSIGNMENT OF ERROR.

The trial court erred in not giving defendant a new trial on the newly discovered evidence.—R., p. 15.

Defendant, R., p. 129. By District Attorney:

Q. This Anderson check for $536.40 appears to be witnessed by yourself and G. H. Purcell. Who is G. H. Purcell? A. He was a young white man, who was in my office at that time.

Q. Where is he now? A. I don't know, sir. I have been trying to find his whereabouts, but I have been unable to do so.

Q. Has he been subpoenaed as a witness? How long has he been away from Memphis? A. I did not know he was gone until I went to make inquiry about where he was.

Q. What was he doing in your office? A. He was learning typewriting and shorthand.

This is supplemented by defendant's affidavit.—R., p. 190.

Defendant makes oath that he has used due diligence to have the testimony of G. H. Purcell on the trial of this case. He wrote and telegraphed to points where he believed said Purcell could be found, but was not successful in ascertaining his whereabouts until after the trial and argument on the motion for new trial.

First, he learned by letter from Purcell's father that he had recently obtained employment as a postal clerk on

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the line of cars running from Greenville by Birmingham to Atlanta. He employed counsel at Greenville and also in Birmingham, and succeeded in reaching him at Birmingham through the well known firm of attorneys, Cabaniss & Weakley, and through Mr. Weakley succeeded in obtaining from his employer two days' absence in which to visit Memphis and give his affidavit which was completed at about 11:30 o'clock on the night of December 23, 1895, when said Purcell left to resume his employment by the 5 o'clock train on the morning of December 24. Affiant was not able at that late hour of the night to procure a notary public or justice of the peace to qualify said Purcell to his affidavit, but the same was witnessed by the stenographer, Solon Person, and J. R. Ridgely, an employee in the Continental Bank building, where the affidavit was prepared. The same was typewritten and signed on the night of December 23, as already stated, and is enclosed herewith. Purcell is the very person who was one of the witnesses on the check of William Anderson for $536.40.

The affidavit of J. M. Marsh was offered on the motion for a new trial. I have no personal acquaintance with said Marsh, and was not aware of the fact that he knew anything that would be competent and favorable to me on the trial of my case prior to the trial and until a few hours before the argument on the motion for a new trial. I pray that I may be allowed the benefit of these affidavits on consideration of the motion for a new trial.

G. H. Purcell in his affidavit says he was in defendant's office using the type-writing machine from October 5th to 25th, 1894. That he was called on to witness marks. That on December 23, 1894, he examined the Anderson check and his attesting signature is written on that check. He wrote it and wrote 98 Robeson street. That he had no recollection of the person who made the mark. That he would not have witnessed the mark unless the person had been present who made it. That he

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remembers Sanderlin, and remembers Sanderlin on one occasion going out of the office with a colored person to have his check cashed at the bank. That he remembers Franklin.

Marsh (R., p. 186) says knows defendant by sight. He knows Sanderlin. In going to defendant's office in October, '94, you had to go by his candy wagon. About then I saw Sanderlin with another negro pass my wagon, and as he passed he remarked, I am going to take this old man to the bank and get him a pile of money that big (affiant motioning with his hands). He was an old man and tolerably black. I know one of them had a piece of paper in his hand, but I don't recollect which one. It looked like it might be a check. I saw Sanderlin again that same day. Only a few minutes. He was on his way to Humes' office and as he passed he said, that old man got $500. I never spoke to Humes. I have known him all my life.

It is respectfully submitted that certainly the proper ground is laid for the introduction of the Purcell affidavit by the answers on cross-examination of the defendant to the District Attorney. And also in the affidavit itself by defendant. As well as to the evidence of Marsh.

And the trial court, in disposing of this, just says it is cumulative evidence only. R., p. 15.

This surely can't be a proper ground for rejecting it.

It is not cumulative merely. It is the independent evidence of Percell, the other witness to Anderson's mark on the check that he witnessed it. That it was an old black man. That Sanderlin went out of the office to the bank with him to get the money. That the signature of Purcell is his genuine signature. That the place of his then residence is also written in his own hand-writing. And he fixes the date between the 5th and 25th of October, 1894. Showing it was October 8th, 1894, when Anderson in truth came there and got his money. And it is another link forged in the wall of testimony that

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Anderson did not come on October 29, 1894, to Humes' office and get any money, $50 or anything else.

And so Marsh evidence. He saw the old colored man with Sanderlin early in October, 1894, go by his candy wagon on the way to the bank. One of them had a check and Sanderlin said I am going to take this old man up to the bank and get him a pile of money that big (affiant motioning with his hands) and only in a few minutes Sanderlin came back on his way to Mr. Humes' office and as he passed said, that old man got $500.

There is nothing about this evidence that can be called merely cumulative.

It is the independent evidence of two witnesses as to vitally material facts which were in their own personal knowledge. To which no one else could testify or knew of.

And surely in justice and right entitled the defendant to the weight of their evidence if it were but a feather weight, because it might of itself alone turn the scale of evidence in his favor with the jury in spite of all the trial court had said against him in the charge.

And so for this reason, too, we submit the case should be reversed and cause remanded for a new trial.

J. M. GREER,

Counsel for Plaintiff in Error.

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IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 480.

HUMES, PLAINTIFF IN ERROR.

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF TENNESSEE.

BRIEF FOR PLAINTIFF IN ERROR, In Reply to Brief for the Prosecution.

STATEMENT.

Plaintiff in error was tried at the November term, 1895, of the above-mentioned court, and a verdict of guilty returned.

The indictment contains nine counts, and was drawn under section 5485, R. S.

The jury returned a verdict of guilty as to the first and third counts, a verdict of not guilty as to the second, fourth, seventh, eighth and ninth counts, and a nolle pros. was entered by the district attorney on the fifth and sixth counts.

So, the matters for the decision of the court here are confined to the first and third counts, upon which a verdict of guilty was returned in the court below.

But the whole record, we most respectfully submit and insist, is here for the consideration of this court in the proper determination of the matters herein involved, because a careful review of and the deliberate consideration which we feel sure this court will give to the whole of the record, and for which we humbly pray, will show the entire correctness of the errors upon which we so earnestly insist and submit here.

The first count is in the words as stated, as to Wm. Anderson, in withholding $486.40.

The third was as to Bloodson, in the same words, as to $517.20.

[The italicising of words in the brief is usually ours.]

POINTS AND ARGUMENT.

Learned counsel for the prosecution in his brief, at the bottom of page 5 and top of the 6th page, says this:

"*There were only two issues of fact for the jury. The first was "whether Humes was the agent or attorney for the pensioners named, "or was instrumental in prosecuting the claims for pensions?*"

"*And, if the jury should find that he occupied either relation to the "pensioner and his claim,*

"*Then the second issue was whether he wrongfully withheld from "the pensioner the whole or any part of the pension allowed and due "the pensioner before it reached the hands of the pensioner?*

"*There was ample evidence to go to the jury upon both these issues, "as will be ascertained by an examination of the record.*"

And at the bottom of page 7 and top of page 8 in his brief he says this:

"*The attention of the court is called to these parts of the evidence to "show that there was evidence sufficient to go to the jury upon the issue "of fact as to whether Humes was the agent or attorney of the pension-"ers, or was instrumental in prosecuting the claims for pensions, and "it was for the jury, after hearing the witnesses, observing their man-"ner and demeanor upon the stand, and considering all the circum-"stances, to say whether or not, as a fact, Humes had been instru-"mental in prosecuting these claims for pensions, or any of them.*

"When this fact was established to the satisfaction of the "jury, then the remaining issue was to be considered, namely, "whether Humes wrongfully withheld from these pensioners, "or any one of them, any part of the pension allowed and due

"such pensioners before it reached the hands of the pensioner."

These two statements of the learned counsel in his brief, state our contention exactly, and about the whole of our contention.

It was the failure and refusal to so charge the jury, which is our third assignment of error, which counsel, on pages 2, 3 and 4, say is properly here, and which the trial judge refused to give.

We might agree, too, with the statement of counsel for the prosecution that there may have been ample evidence to go to the jury on both of these issues, for the sake of examining this part of the charge.

And we may as well say here that we consider this, and have all along, as raising one of the main questions in the case for review, and upon which we do not think there is any doubt of the right of reversal of the case for a new trial.

In our original brief herein we urged it all we could possibly think of, along with our argument on the second assignment of error. And if there is any choice in the way the trial court committed the error—whether charging the law wrong, as he did, or failing to correctly charge it, as he refused to do—to this extent we may defer to the counsel for the prosecution. He undertakes to answer this error of which we complain so much and at such great length in the original brief, by quoting from the words of the charge by the trial court.

But counsel for the Government has failed to quote *all* that was said by the trial judge on this question, because, if the words alone of the trial court on this question do not show error, when considered in the light of the repeated decisions of this court on the very point there made, then we are forced to confess we are unable to see it.

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Counsel for the prosecution in his brief on page 3 undertakes to quote the language of the trial court in his charge as found on page 175 of the record and undertaking to quote that language puts this:

"Now, with these general observations that are applicable and will be kept in mind by you throughout in this case, we come to the testimony in the case, and in respect to that it appears from the statute, as you have observed, that it is necessary in order to make the case against the defendant:

"First. That he must have been the agent or attorney of the pensioner, or he must have been instrumental in the prosecution of the pension claim, before he falls within the category of the persons who are subject to the provisions of the statute; and

"Second. He must withhold from the pensioner all or a part of what was due the pensioner claimant.

"So that two propositions are necessary to be established:

"That the defendant was an agent or instrumental in the prosecution of the claim, and secondly, that he withheld from the pensioner money that belonged to the pensioner, some part of the pension that was *allowed*" (not due, as held in Ballew case).

And we agree with counsel for the prosecution, that if this had been all the trial court said to the jury in his charge on this point, then there would in truth be nothing in our third assignment of error, as his argument in his brief on this point would be an answer to it But the trial court in its charge right there in the same sentence goes on and says:

"*Now, desiring to get the jury down to the real issue in this case as it comes to you*, leaving the jury free to find for itself, the court is of opinion that, considered in referrence to either the Government's proof or the defendant's, and with reference to the written evidence or the oral,

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"*That the defendant was instrumental in the prosecution of these claims in such sense as that if he withheld the money he would be within the provision of the statute and guilty.*

"*That brings you to the fact, then, of whether or not he did withhold these pension claims.*"

This was error, because it took from the jury all consideration of the evidence tending to show that the defendant was neither the attorney, agent, or person instrumental in procuring or prosecuting the pension claim of either Anderson or Bloodson. This being a question of fact, as to whether the defendant was or was not such agent, attorney, or person procuring said pension money, it was the province of the jury and their duty to determine such fact for themselves from the evidence, and the court could not instruct them upon this as matter of law.

Again the trial court says: "*That is the real issue,*"

"In respect to this Anderson transaction,"

"*Viz.: Who got the proceeds of that check?*"

"*If Mr. Humes got and retained the proceeds, or retained any part of it above the notary's fee, then he is guilty; whereas if Anderson got it, that is the end of the case so far as that count is concerned; or if, under the rule stated, you have a reasonable doubt about how that is, the defendant is entitled to an acquittal.*"—R., p. 176.

Again he says: "*So that did he withhold from Anderson all or any substantial part of that pension?*"—R., p. 178.

"*If so, he is guilty, and you should convict him: and if not, or if you have a reasonable doubt, acquit him.*"

Thus it is seen the trial court usurped and invaded the province of the jury in his charge, in that nine separate times he withdrew from them the finding and consideration of what he himself first charged was the primary fact, that they themselves

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must first find, as a condition precedent, before there could be any conviction: i. e., that the defendant "*must have been instrumental in the prosecution of the pension claim before he falls within the category of the persons who are subject to the provisions of the statute.*"

Twice the court stated to the jury fairly what they must find as a condition precedent before they could convict.

He says: "*It appears from the statute, as you have observed, that it is necessary, in order to make the case against the defendant. first, that he must have been the agent or attorney of the pensioner, or he must have been instrumental in the prosecution, etc.; and second, if he was, he must withhold, etc.*"

And he reiterates it: "*So that two propositions are necessary to be established.*"

And he repeats what they are again. He emphasizes it for the second time:

"*That defendant was an agent or instrumental in the prosecutim of the claim; and secondly, that if he was, he must withhold, etc.*"

Who found this primary fact that it was charged the jury must find as a condition precedent before there could be any conviction? The trial court; and so stated to the jury.

It may be suggested that in the first part of the charge the court used the words, "*leaving the jury free to find for itself, the court is of opinion that, etc.*"

In the very next breath, where he repeats that charge, does he say again, "*leaving the jury free to find for itself, the court is of opinion etc.*" *No. There is no even apparent limit on his charge this time.* He says, "*That brings you to the fact then, of whether or not he did withhold these pension claims.*"

What has become of the primary fact that he told the jury they must first find as a condition precedent before there could

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be any conviction? What is it "*that brings you to the fact, then, of whether or not he did withhold these pension claims.?*"

It was that the trial court had found the primary issue of fact—condition precedent for them which he at first had twice submitted to them, and he so charged them what it was, i. e., that defendant was instrumental in the prosecution of these claims in such sense as that if he withheld the money he would be within the provisions of the statute and guilty.

Next he says, "*and that is the real issue.*"

There is no even apparent limit on these words. He does not tell them this time, " leaving the jury free to find for itself, the court is of opinion," etc.

He tells them, "*and that is the real issue.*"

What has become of the primary other real issue—condition precedent—that he himself had twice charged them before, they themselves must first find before there could be any conviction?

He himself has found for them what that primary fact—condition precedent to any conviction—was, many times before and afterwards.

And for the fourth time, as if to clinch it, he charges them:

"If Mr. Humes got and retained the proceeds, or retained any part of it above the notary's fee."

What, then, is the only sole and solitary condition upon which he puts the case to them on? "*—then he is guilty.*

This time, does the trial court leave it to the jury to find whether or not the defendant belonged to that class of persons who would be within the provisions of the statute, and his guilt or innocence depend primarily on that as a condition precedent to their right to convict him? No. The trial court

has long since in his charge, three distinct times, passed that issue of fact, by finding it himself and so charging the jury, and now he tells them if Mr. Humes retained it, he is guilty.

The trial court has changed it—defendant's guilt or innocence now rests with them alone on the solitary issue of fact as to whether or not he retained it.

Does the trial court tell them this time, "leaving the jury free to find for itself, the court is of opinion?" No. Leaving out of consideration all things else, he says if Mr. Humes retained it, he is guilty.

He says next: "Whereas, if Anderson got it, that is the end of the case, so far as that count is concerned."

"Or if, under the rule stated, you have a reasonable doubt about how that is, the defendant is entitled to an acquittal."

Do these two charges look much like leaving the jury free to find for itself, or that the trial court could be much of the opinion that the jury were left free to find for itself whether or not the defendant was instrumental in prosecuting these claims for pensions before the Pension Office?

Again he says:

"*So that did he withhold from Anderson all or any substantial part of that pension?*

"*If so, he is guilty, and you should convict him.*"

"*If not, or you have a reasonable doubt, acquit him.*"

Do these three charges look much like the jury were left free to find for itself, or that the court was simply expressing an opinion as to whether the defendant was instrumental or not in prosecuting these claims for pension before the Pension Office?

Could language be plainer, showing that the court had time and time again in his charge taken away from them all con-

sideration of such fact, and had time and time again so charged them?

In fact, there was no limit upon the charge, and if one was intended it is strange indeed that so many times the limiting words should have been omitted altogether.

If you examine the charge again you will readily see the plain meaning of it was to the jury this: I charge you that, taking all the evidence in consideration, both the Government's and the defendant's, written and oral, the defendant was instrumental in prosecuting these claims for pension in such sense that if he withheld the money he would be within the provisions of the statute and guilty.

If the trial court intended to leave the jury free to find for itself, and simply to express his opinion, that is reversible error under the repeated decisions of this court, cited beyond, where it is the finding of the primary fact.

But the use of the expression, "leaving the jury free to find for itself, the court is of opinion," is a meaningless nothing when called a limitation on a charge where the judge told the jury that from all the evidence, the Government's and defendant's, written and oral, the defendant was instrumental in prosecuting these claims in such sense that if he withheld the money he would be within the provisions of the statute, and guilty.

His reference to it as both the Government's proof and defendant's, written and oral, but fixed it more firmly in the minds of the jury as settling the primary fact by the judge in his charge to them. After stating it in such unqualified terms, if he had said a thousand times, "leaving the jury free to find for itself, the court is of the opinion," etc., how was it possible

for him to have effaced from their minds the fixed fact as he had stated to them he had found it?

In Starr vs. U.S., 153 U.S.,626, this court, by Mr. Chief Justice Fuller, called attention to the fact that there were limitations on the power of a Federal court in commenting on the facts of a case, when instructing the jury—*limitations inherent in and implied from the very nature of the judicial office.*

In Reynolds vs. U. S., 98 ib., 168, this court, by Mr. Chief Justice Waite, also said on the same subject: "Every appeal by the court to the passions or prejudice should be promptly rebuked, and *it is the imperative duty of the reviewing court to take great care that wrong is not done in this way.* * * * "

In History vs. U.S., 160 ib., 425, this court says: Admonished by the duty resting on us in this regard, we feel obliged to say that the charge which we have been considering *crosses the line which separates the impartial exercise of the judicial function from the region of partisanship, where reason is disturbed, passions excited, and prejudices necessarily called into play.*"

The court in the case at bar first stated the true rule of law to the jury: That, as a condition precedent to conviction, they must find as a fact that the defendant was the agent, attorney or any other person instrumental in prosecuting these claims for pension before the Pension Office.

The defendant could not be within the statute and punished for a violation of law, if he violated it, unless the jury first found that he belonged to this class. Yet in the face of so plain a law the judge finds this fact for them.

If he intended to leave the jury free to find for itself, and only to express an opinion to which they should pay not the least bit of heed in the world, why did he tell them:

" *Now, desiring to get the jury down to the real issue in this case?*"

Why, he himself had twice before charged them that there were

two real issues in this case.

If he intended to leave to them the finding of the

two real issues in this case,

why did he tell them :

" *Now, desiring to get the jury down to the real issue in this case?*"

What had he done with the

other real issue in this case?

If he intended to leave the jury free to find for itself, why in his very next breath did he say :

" *That brings you to the fact, then, of whether or not he did withhold these pension claims?*"

What has the judge in this part of his charge done with

the other real issue in this case?

Then he says:

" *and that is the real issue.*"

Why, we are told he intended to leave the jury free to find for itself.

If so, what has he done with the

other real issue in this case?

If he intended to leave the jury free to find for itself, why did he say next, " If Mr. Humes got and retained the proceeds, or retained any part of it above the notary's fee, then he is guilty."

What did the judge do with the

other real issue in this case?

The trial judge in his charge to the jury starts out by telling them that there are these two issues for them (the jury) to find

as facts. And if he had let them alone on this point, we would have nothing to say.

But he refused to let them find or even consider the first fact.

He goes right on, and in the very same breath says:

"Now, desiring to get the jury down to the real issue in this case, I say to you that the defendant was instrumental in the prosecution of these claims in such sense that if he withheld the money he would be within the provisions of the statute, and guilty."

Then he says:

"That brings you to the fact, then, of whether or not he did withhold these pension claims."

Where, now, is the first issue of fact that learned counsel for the prosecution say should have been left to the jury to find as a fact. The trial judge himself has found it—what that issue of fact was—and so charged the jury what it was.

And this is the error of which we complain.

If he had not told them the plaintiff in error was guilty on the first fact they would have told him, as they had done—not guilty on the second issue of fact.

Learned counsel for the prosecution says:

"And if the jury should find that he (Humes) occupied either relation, then the second issue was whether he wrongfully withheld."

This is so.

But after the trial judge had told the jury how to find the first issue of fact it left them no show to find anything about the second, except to return a verdict of guilty, as the trial judge in effect told them to do.

Learned counsel for the prosecution in his brief, p. 8, says: "there was evidence sufficient to go to the jury upon the issue of fact as to whether Humes was the agent or attorney or instrumental in prosecuting the claims for pensions, and it was for the jury, after hearing the witnesses, etc., to say whether or not as a fact Humes had been instrumental in prosecuting these claims for pension."

Learned counsel for the prosecution, we may concede you are right about this.

And the question we ask is why did not the trial court allow the jury to do so. This is the error of which we complain.

Learned counsel for the prosecution then says, p 8:

"When this fact was established to the satisfaction of the jury, then the remaining issue was to be considered, namely, whether Humes wrongfully withheld from these pensioners, etc."

We heartily and fully agree to this, and the soundness of the same.

Learned counsel for the prosecution, on p. 6 of his brief, rather argues that the proof showed Humes was the agent and the attorney of the parties, and instrumental in the prosecution of their pension claims as such.

We are at least glad to see learned counsel take this position, because it shows the different representatives of the government in this case take different views of the facts.

The trial judge said it was not (as it was not) so much as contended even in argument by the government that Humes was either the agent or the attorney of any of these parties, but only that he was instrumental.

From the brief, we judge learned counsel's argument here is that the facts show Humes was all three.

Learned counsel, on p. 7 of his brief, says Deaderick was the attorney.

Learned counsel has evidently gotten a little mixed on the facts here. But we do not want to add any to his confusion, or confound him more than he is already, because we know it comes from the large record and brief we have been compelled to impose upon the court and him.

The lawyer first was named Dederick, W. W. He is now in the pension office at Washington. He was succeeded by Powers & Chiles, the attorneys whom this record shows got the fees in these cases.

The man Deaderick was the son of the once Chief Justice of our State Supreme Court. This man was all along the clerk of these other three, but he never was the lawyer of any of them. He died at Chattanooga in February, 1895.

In concluding this, we beg to say that nothing better shows that all the assignments of error made by the plaintiff here are well taken, and should be allowed and sustained, and that the trial court erred in not, in a fair and impartial way, leaving all the facts to the untrammelled determination of the jury, than the brief of the learned counsel for the prosecution in this case. Seven pages of his eleven-page brief he devotes to his statement and view and claim of the facts. And he even claims those facts show what the trial judge and the district attorney both below did not even claim or contend in argument that they showed. They admitted both of them that they showed exactly the opposite of what learned counsel here contends.

We have cited page after page of the facts, as we claim they show the verdict was against the weight of the evidence.

That, on the law as well as the facts, the trial judge should have charged the jury to find the defendant not guilty.

Then, how else can we settle our cross contentions except we leave them to the jury on proper instructions by the court.

Compare for a moment what the trial judge says in his charge, where he states to the jury, as a fact, that Humes was instrumental in prosecuting these claims for pension.

Never after he says this to the jury, in his long ten-page printed charge, does he mention it again, or refer to it, or comment on a single word of all the proof bearing on this question of fact.

Now, compare this with the brief of learned counsel for the prosecution, and you will see that seven out of the eleven printed pages of his brief are devoted to the evidence shown in the record on this issue of fact.

Can anything demonstrate more plainly than this that the trial judge in truth withdrew, and erred in withdrawing, from the jury altogether this issue of fact?

We have tried in our original brief to state the case, law and facts, all fully, and we must confess we rather looked for learned counsel for the prosecution, even in his short brief, to state fully what was said on both sides.

We should have been glad to see what answer he had to make to the expressions of the trial judge, "now you have that conflict in the evidence;" and the conflict is hopeless he tells the jury. And if so, what could counsel say in justification of it? Could it be claimed that such evidence as this, that was

involved in hopeless conflict could show guilt beyond a reasonable doubt? Could it overturn the legal presumption of innocence, the witness of the law that stood for the accused until overturned by proof carrying home conviction, short only of absolute certainty?

We are sorry counsel did not mention that the bank records, the vouchers, the checks, and the bank teller testified, with several other witnesses, that [illegible] Anderson and Bloodson paid the money on these checks.

How can these plain contradictions by the witnesses of the prosecution, of themselves and each other, be settled.

How is it answered, that a jury has once found, as a fact, that Humes was not the agent, attorney, or any other person instrumental, of Anderson or Bloodson, and did not withhold from them, or each of them, these specified sums of money, or any parts thereof? And if once acquited of the charge, how can he be again or twice tried?

But we ask that the original brief be considered, as it covers fully all these and the other vital questions in the case. And we can add nothing else to what we have already said on this point, unless we should just simply reprint our original brief from pages 2 to 9 and 23 to 56, inclusive, which is the argument on this point, with the authorities there cited, and on which, if counsel for the prosecution had even attempted any answer to, we should have nothing further to say.

But we respectfully submit that his brief overlooks this vital part, and real point and argument and error, as shown in and by the record, and the charge of the trial court and the repeated decisions of this court, holding that such a charge was manifest error, and reversible error, and error prejudicial to the rights

of the defendant in the court below (plaintiff in error here.)

We do not pretend to say that there is any error in that part of the charge copied in the brief by learned counsel for the prosecution on page 3.

Indeed we fully agree that in this part copied by him in his brief there is no error at all. And if alone as there given, the verdict would have been, as on the others, not guilty. But in that part of the charge which is not copied in his brief, and which is all part of the same charge on the same point, there is error too manifest to speak of. And to charge as a fact, as it was given, is unquestionably reversible error. It is readily seen by simply reading the words of the same. And to refuse to give in charge this question as requested is surely reversible error.

And when the charge in full is considered, it answers completely the argument counsel for the prosecution has made in his brief against it.

Then he says, when a jury has been properly instructed.

We don't gainsay this proposition at all, but the whole of our argument in the former brief shows, we most respectfully submit, that the jury has not been properly instructed—has been improperly instructed.

Again he says a trial court may use its own language, *so long as the correct rule* upon the subject requested be given by the court.

This is true; but so long as the correct rule of law upon the subject requested be not given by the court, it cannot use its own language, and if it does, it is reversible error. The incorrect rule of law cannot be properly given.

Again he says: "It is sufficient that the court gave no erroneous instruction." This is the true rule of law, but if it is shown that the court did give erroneous instructions then the rule is just exactly the opposite.

II.

Counsel for the prosecution rests his position in his brief, p. 2, wholly and solely on a purely a technical objection.

It is not to the merits of the position of the plaintiff in error that he objects. He does not controvert or dispute them. It is not that the decisions of this court on the points stated do not fully sustain them. It is not that the errors assigned are not well taken and that there is not real and true error committed by the trial court in the assignments of error as made. His sole and single plea is that he appeals to this court not to consider or pass upon the real and true merits of the questions of law and fact in this case.

His position is that for the thirteen assignments of error except the third, all based upon the judge's charge to the jury and his refusal to properly charge, the record fails to show that strict technical exceptions were taken and noted as a foundation for these assignments of error.

To this we cannot assent. He in his brief does not object because there is not a proper bill of exceptions in this case. And indeed he could not, for there is a bill of exceptions made making everything in the record properly a part of it by that bill of exceptions. It shows it contains all the evidence offered in the case, even the affidavits used on the motion for a new trial. It shows that they are all properly made parts of the record by a bill of exceptions.

To the action of the court at the trial of refusing to give the requests asked and in not correcting the errors complained of in the charge as given, and so overruling them in the written motion in arrest of judgment, the defendant again excepted and tendered this, his bill of exceptions, seeking to show the whole proceedings, which is signed, sealed and made a part of the record, the same having been prepared, as it stipulates, in the presence of counsel for the Government and of counsel for the defendant.

These written exceptions and objections to the parts of the charge as specifically pointed out, and to those specifically pointed out which the trial court would not consider or give, but overruled, do not bear at their head the technical word "exception," but the words used are "statement of grounds." Counsel for plaintiff in error did not take the trial judge's charge to the jury and write on it the words, this part is excepted to and that part is excepted to, and conclude each with the words "to this ruling of the court Humes then and there excepted," but filed his written exceptions and objections to the same, and they are part of the bill of exceptions.

What is the purpose of exceptions? All that is ever required is to point out to the trial judge the specific parts of his charge to which the party excepts and objects, and to specifically state what it is he wishes the trial court to charge the jury or give in his charge to the jury as the correct construction as the party contends. This was certainly done as to every one of the thirteen assignments of error herein, by a written statement setting out each one. Not only were they specifically objected and excepted to, but on the motion in arrest of judgment these very thirteen exceptions and objec-

tions, in the exact words of the assignments of error, were again set forth in writing, and these are made a part of the record properly so in this case, by the bill of exceptions, and the trial judge, on the motion in arrest of judgment, takes up seriatim each one of the thirteen exceptions and objections to the charge as given and refused to be given, and states his reasons in writing why the exceptions and objections were disallowed and overruled by him. R., p. 15. And each part of the charge in its very words was specifically pointed out in writing to the trial judge, to which objection was made and exception taken, as to what he charged and failed and refused to charge or to even consider as proper for his charge, even on the motion in arrest of judgment. And this the record, too, clearly shows in three separate and distinct ways, written papers to be now brought in question.

1. By the exceptions taken to the charge and reserved on the motion in arrest of judgment, both of what was error in the charge given and error in failing to give in the charge.

2. By the trial judge's disposition in writing of each of the same; and

3. By the written assignment of error, made part of the record with the bill of exceptions at the same time.

Each of the three being written in exactly the same words. But the position of counsel for the prosecution is that the assignments are not technically—strictly speaking—of or properly made as above stated. And at last we must turn to the decisions of this court to fix the rule and see what it is.

In Allis vs. United States, 155 U. S. 122, this court by Mr. Justice Brewer says:

"A party must make every reasonable effort to secure from

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the trial court correct rulings, or such at least as are satisfactory to him before he will be permitted to ask any review by the appelate tribunal, and to that end he must be distinct and specific in his objections and exceptions. Rule 4 of this court provides the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts, and those matters of law and those only shall be inserted in the bill of exceptions and allowed by the court."

Justice itself, and fairness to the court which makes the rulings complained of, require that the attention of the court shall be specifically called to the precise point to which exception is taken, that it may have an opportunity to reconsider the matter and remove the ground of exception. 2 Wall, 329.

If it was intended to save an exception as to distinct propositions embodied in the instructions, the attention of the court should have been directed to the specific points concerning which it was supposed error had been committed. 111 U. S., 337.

An exception to all and each part of the charge gave no information whatever as to what was in the mind of the excepting party, and therefore gave no opportunity to the trial court to correct any error committed by it. 140 U. S., 238, 120 U. S., 183, 130 U. S., 611, 132 U. S., 172.

In Agnew vs. United States, 165 U. S., 52, this court, speaking by Mr. Chief Justice Fuller, in commenting on the Coffin case as to the presumption of innocence, says: "*But in that case the charge of the court was thought not to have given effect to the presumption of innocence.*"

That is one of our instances in the case at bar.

The trial court did not give effect to the presumption of innocence in what it said, as the law requires it to do.

This court in the Agnew case says further: "*We have carefully explored the evidence* and considered the errors assigned, whether pressed in argument or not. P. 57.

"Nineteen errors were assigned, of which the 3d, 5th, 9th and 14th were abandoned, and the 6th, 7th, 12th, 16th, 17th, 11th and 15th were argued by counsel for plaintiff in error together." P. 42.

This court, speaking by Mr. Justice Brewer, says, as it is a criminal case, "*we will carefully examine the record with all the assignments of error, in order to see that no injustice has been done the defendant.*" Davis vs. United States, 165 U. S., 375.

In Acres vs. U. S., 164 U. S., 390, this court, speaking by Mr. Justice Brewer, say: "It may be premised that the exceptions to this charge are taken in the careless way which prevails in the western districts of Arkansas. But passing this, and considering the charge as properly excepted to," etc.

And so with the case at bar, counsel for plaintiff in error might confess the same, or that the exceptions were here through main strength and awkwardness, but still they are here, we submit, for the proper consideration of this court.

In Allen vs. U. S., 164, U. S., 494 this court, speaking by Mr. Justice Brown, says: "The learned judge was stating in this connection the theory of the prosecution, *and if the facts were as stated by the Erves boys, there was no error in saying to the jury, not that they were bound to, but that they were at liberty to infer, &c.*

"*It is misleading for a court to charge a jury,*" *&c.*

In Starr vs. U. S., 164 U. S., 631, this court, by Mr. Justice White, says: "The instruction given by the trial judge to

the jury upon the inferences to be drawn by them was specifically objected to, and the objection was duly reserved.

In Wiborg vs. U. S., 163 U. S., 656, this court, by Mr. Chief Justice Fuller, says: "This statement was based on uncontradicted testimony, and occurring as it did, in a recapitulation of the evidence, *no rule of law being incorrectly stated, and the matters of fact being specifically submitted to the determination of the jury.*"

And quoting further from the charge to the jury of the trial court, with approval, this:

"*The question, however, is one for your determination alone, and I submit it to you as such, reminding you that the responsibility of deciding it rests upon you only.*"

Then this court says:

"Clearly, the *observation of the court thus guarded, did not trespass on the province of the jury as to constitute reversible error.*" 142 U. S., 155.

And again this is quoted with approval from the charge of the trial court to the jury:

"*You must judge.*"

And then this court says:

"Nor was any exception taken, although they are now assigned for error. And although this question was not properly raised, yet if a plain error was committed in a matter so absolutely vital to defendants, we feel ourselves at liberty to correct it, (p. 658) and that we may properly take notice of what we believe to be plain error, although it was not duly excepted to.—p. 659. We are of opinion that adequate proof to that effect is not shown by the record, and that as the case

stood, the jury should have been instructed to acquit them (p. 660), and after subjecting the correctness of the rulings of the court below to that careful examination which the discharge of our duty requires."

In Stevenson vs. U. S., 162 U. S., 315, this court, by Mr. Justice Peckham, says:

"A review of the evidence at the trial of the defendant (plaintiff in error) in the court below shows that there was error in the refusal of the court of the request of the defendant's counsel to submit the question to the jury."

In Logan vs. United States, 144 U. S., 282, this court, speaking by Mr. Justice Gray, says:

"But the motion in this case appears to have been intended and understood to include an exception. And the same question is distinctly presented by the judge's refusal to instruct the jury as requested and by the instructions given by him to the jury."

In the Railroad vs. Winter, 143 U. S., this court, by Mr. Justice Lamar, says: "It may be that if we were to usurp the functions of the jury and determine the weight to be given to the evidence," etc.

In Hickory vs. United States, 160 U. S., 413, this court, by Mr. Justice White, says:

"It is contended by the defendant in error that of these assignments the 4th and 7th are not sufficiently specific to merit consideration, because they do not point out the exact words in the charge of the court complained of. The assignments are in exactly the same language as were the exceptions taken during the trial and which the record declares the de-

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fendant presented at the time; that the assignments do not in terms state the precise language used by the court, they yet indicate the subject matter in the charge to which the exceptions relate with sufficient clearness to enable us, from a mere inspection of the charge, to ascertain the particular matter referred to. In considering, when this case was previously before us, a similar objection to the adequacy of an exception, we said: 'The rule in relation to the exceptions to instructions is that the matter excepted to shall be so brought to the attention of the court before the retirement of the jury as to enable the judge to correct error, if there be any, in his instructions to them, and this is also requisite in order that the appellate tribunal may pass upon the question raised without being compelled to read the record to ascertain it. It is here unquestionably on the very face of the bill of exceptions that the objections were reserved, * * * * * * * and that the trial court was fully aware of their import and had the opportunity to make such correction, if any, as its judgment may have deemed necessary to prevent the charge from being misunderstood by the jury. This is made clear not only by the language of the bill of exceptions, but also by the charge itself, which contains a statement by the court, entirely inconsistent with a possibility of there having been any surprise or misconception."

Same case, 151 U. S. 316, this court, by Mr. Chief Justice Fuller, says:

"The trial judge could not have been in doubt as to the particular part of the charge objected to, and, as his attention was called to the matter, * * * * could have modified or withdrawn it, if he had thought it necessary to do so, and the

portion excepted to is indicated with sufficient precision, so far as this court is concerned.

"Nor did the exception embrace other than the specified statements objected to.

"Again, the exception was not to the omission of the court to charge upon a particular point, in which case, in the absence of requests that that should be done, it would not have been well taken, R. R. vs. Polk, ante 73, although even in that view the exception might be held equivalent to a request for the qualification, but the objection really was to the giving of the instructions unqualified, and counsel signified out of abundant caution what in their judgment would remove their ground of complaint. We hold, therefore, that the point was sufficiently saved."

The bill of exceptions in the case at bar preserves the whole charges.

It contains all the evidence. It shows all the exceptions taken and written down, even that plaintiff in error took exceptions to the evidence throughout and sought to reserve his exceptions to the action of the trial court on the same.

In Theide vs. Utah, 159 U. S., 521, this court, by Mr. Justice Brewer, says:

"One object of an exception is to call the attention of the circuit judge to the precise point as to which it is supposed he has erred, that he may then and there consider it, and give new and different instructions to the jury, if in his judgment it should be proper to do so."

The exceptions in the case at bar were taken at the trial. They are written out and embodied in a formal bill of excep-

tions presented to the judge at the same time; allowed and signed by the judge and filed with the clerk during the same term. The bill of exceptions was reasonably drawn up and tendered. It states in writing distinctly the rulings complained of and the exceptions taken, and the duty of the court of error is limited to determining the validity of exceptions duly tendered and allowed.

These essentials we take from the opinion of this court through Mr. Justice Gray in Bank vs. Eldred, 143 U. S., 298.

So far as we can learn, by much studying and investigation, no set form of words is necessary. That you pointed out to the trial court the specific parts of the charge that you insist are erroneous, and state the specific errors you claim the trial judge made in refusing to charge as you asked him, and all this in writing, and get him to rule in writing on the same, and then embrace the result of that in a proper bill of exceptions, signed by him, so this court can see what the errors are which you specify, then that fixes it. That is all the law requires so far as we can learn. You don't have to call them by a technical name to get the benefit in full of them. There is no particular place in the record that they must be put to make them valid, so far as we can learn.

On the motion in arrest of judgment plaintiff in error presented affidavits showing newly discovered evidence.

The trial court held in writing these affidavits were merely cumulative evidence. To this ruling of the trial judge, that this was merely cumulative evidence, plaintiff in error then and there excepted in writing, and we surely submit that if this court concludes that was error—that it was independent evidence to which plaintiff was entitled to the full benefit, and

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that the trial court erred in not arresting the judgment and giving plaintiff the benefit of it then—we surely submit this court will reverse and remand the case on that ground.

The trial judge says in writing, as to the first ground assigned as an objection to the charge, he does not think it is well taken, and overrules that objection, going on to state his various reasons, which were excepted to in writing by plaintiff in error.

As to the second assignment of error, the trial court seeks to justify as right what he said in the charge there, by a written opinion. This was excepted to in writing.

The third assignment of error counsel for the prosecution says is properly here for consideration by this court.

The fourth assignment of error the trial judge seeks in his written opinion to justify and sustain as being right and without error.

The fourth, counsel for the prosecution also claims is not duly excepted to and reserved, and can't be claimed as error, although it is excepted to in writing, and the trial judge denies in his written opinion it was error, although he himself became so well satisfied in about an hour after he gave it in charge that it was such palpable error that he withdrew it from the consideration of the jury, and has it so written down. R., p 182.

This is the point where he told the jury if they believed that defendant had proved the truth of his defense and his entire innocence of the charge; in other words that all that he got was the notary fee, then they must take his establishing the truth of his claim to discredit him by. And yet counsel for the prosecution (in his zeal we take it) tells us that errors

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which are so palpable that the trial judge himself soon becomes satisfied of them and seeks to withdraw them, and has it so noted in writing on the charge, the plaintiff in error can have no benefit for such errors as this.

The fifth assignment of error the trial judge says is not well taken; nor the 6th nor 7th, all in his written opinion on the motion in arrest of judgment.

The 8th and 9th assignments the trial court says was intended for the benefit of plaintiff in error.

The 10th, 11th and 12th grounds the trial court also overrules in his written opinion. That he should give undue prominence to the evidence of the prosecution and omit or obscure that in favor of the plaintiff in error the trial court could not see how this could be harmful error to the plaintiff in error.

It was error to overrule the motion in arrest of judgment, as was done by the trial court in the case at bar. It was error to render judgment against the plaintiff in error upon the verdict, and to sentence him thereon.

The plaintiff in error moved, upon written grounds filed, to arrest the judgment and to set aside the verdict. He tendered his bill of exceptions, embodying the motion in arrest of judgment, with the grounds therefor, and at the same time presented his assignment of errors in exactly the same words. These errors were assigned by him in the court below and made part of the record by proper bill of exceptions.

In Crain vs. United States, 162 U. S., 632, this court, by Mr. Justice Harlan, rendered the opinion, and that opinion shows that this court decided and reversed that case on the shortest kind of a statement only, made in the brief for plaintiff in error

in this court, and at the very close of the brief, "as is fully shown by an inspection of the printed record," the short statement of a few lines in the brief said.

On page 636 this court says: "But an objection is made to the proceedings in the court below which is of a serious character. The record should be a permanent memorial * * * * *and show whether the judgment whereby it was proposed to take* the life of the accused, *or to deprive him of his liberty, was in accordance with the law of the land.* P. 643.

In Hoyt vs. Utah, 111 U. S., 579, this court, observing that *the public has an interest* in the life *and liberty of an accused person*, said:

"Neither can be lawfully taken except in the mode prescribed by law. That which makes the law essential in proceedings involving the deprivation of liberty or life cannot be dispensed with or affected. * * * * * *

"Where the crime charged is infamous in its nature, are we at liberty to guess * * * and then guess again? * * *

"Neither sound reason nor public policy justifies any departure from settled principles applicable in criminal prosecutions for infamous crimes. Even if there were a wide divergence among the authorities on the subject, safety lies in adhearing to established modes of procedure devised for the security of life and liberty.

"Nor ought the courts, in their abhorence of crime nor because of their anxiety to enforce the law against criminals, to countenance the careless manner in which the records of cases involving the life or liberty of an accused are often prepared. Before a court of last resort affirms a judgment of conviction of at least an infamous crime, it should appear affirmatively

from the record that every step necessary to the validity of the sentence has been taken. P. 645.

"We may have a belief, * * * but this belief is not founded upon any clear, distinct affirmative statement of record, but upon inference merely. That will not suffice.

"We are of opinion that the rule requiring the record of a trial for an infamous crime to show affirmatively (and counsel add that no error was committed in the charge as given or refusal to charge) is not a matter of form only, but of substance in the administration of the criminal law, consequently such a defect in the record of a criminal trial is not cured, but involves the substantial rights of the accused.

"The constitution does forbid the deprivation of liberty without due process of law, and due process of law requires a trial by jury and the finding of the facts by the jury and not by the trial judge, and the record of his conviction should show distinctly, not by inference merely, that every step involved in due process of law and essential to a valid trial, was taken in the trial court. Otherwise the judgment will be erroneous and cannot be made the basis of judicial action without endangering the just and orderly administration of the criminal law. The present defendant may be guilty and may deserve the full punishment imposed upon him by the sentence of the trial court, but it were better that he should escape altogether than that the court should sustain a judgment of conviction of an infamous crime where the record does not clearly show that there was a valid trial."

That no error was committed in the case at bar by the trial judge in his charge to the jury and his refusal to even con-

sider or charge as requested cannot be predicated of the record here, we respectfully submit to this court.

Counsel for the prosecution on page 4 of his brief, says:

"The first assignment of error, part of the 8th and 11th, relate to a failure on part of the court to give certain instruction. As said by Mr. Chief Justice Fuller in the Agnew case, error not to have given due effect to the law and the rules of law."

It is error to give a one-sided charge; this court has so said repeatedly. It is error to omit or obscure the evidence in favor of the accused. It is error to denounce the accused and destroy his evidence, as the statute provides he may testify.

The intimations and implications and insinuations of the trial judge, as this court has said, we fear seriously trench upon that untrammelled right of the jury to pass on the facts and for the jury alone to pass on them. And the judge, to whose slightest word the jury give great weight, should be very cautious in what he says and how he expresses his opinion on any mere question of pure fact. This court has repeatedly said this. And that all these were errors, reversible errors, and errors prejudicial to the right of the accused to have the jury pass untrammelled on the facts of his case, by any opinion of trial court.

Counsel for the prosecution says our original brief is elaborate. This is true, and no one can regret it more than we do. But we respectfully submit that the fact that the liberty of a person is at stake, that this judgment as completely destroys him and brings utter ruin to his all, as though it took away his life itself, justifies us.

Five times out of seven this plaintiff in error has been found not guilt of the same charge by two juries in this very case,

and twice as to these very two men, Anderson and Bloodson, both—that he was not the attorney, agent or any other person instrumental of either of them, and that he did not withhold from either of them the very sums here specified, or any parts thereof. And it does seem to us, if there ever was a case where the verdict was against—directly against—the law and the facts, this is the one.

Where the plaintiff in error is not guilty, he is innocent—as completely innocent of this charge as anyone can be who never saw or heard of it before. Where guilt has been put upon him alone by the charge of the trial court; where he found the facts for the jury, usurped and invaded the province of the jury and found for them what the facts were, and so stated to them in his charge to them, the law should correct, and the case be reversed.

Counsel for the prosecution in his brief says there is much in our original brief that is de hors the record.

Our brief shows eight items of proof specifically called for in the bill of exceptions and not copied by the clerk of the lower court in the record. We can't see how this can be any fault of ours. We think it bears out what Mr. Justice Harlan says in the Crain case, that the court ought not to countenance the careless manner in which records of cases involving the liberty of an accused are often prepared. The exceptions taken and reserved in that part of the record showing that plaintiff in error excepted to juror Shepherd, and to the number of challenges allowed by the trial court, is not in this record. But it is no fault of ours, as we think the record shows. It is judicial knowledge that there are jurors, and the accused has a right to test their qualification, and to except to a number of them as

fixed by law—the U. S. R. S. And if he excepted to them and reserved his exceptions in that part of the record to the ruling of the court at the trial on the same, and that part is not copied in the record, it is surely no fault of ours.

The comment of the counsel for the prosecution on the 2d, 4th, 5th, 7th, part of the 8th, 9th and 10th assignments of error we have replied to beyond, and set out our argument in our original brief.

Our position in the 12th and 13th is, as counsel for the prosecution states it, that the verdict is against the weight of evidence.

JAMES M. GREER,
Solicitor for Plaintiff in Error.

No. 150.

Petition for Rehearing.

Rec'd & Dist'd May 21, 189

Supreme Court of the United States.

No. 150, OCTOBER TERM, 1897.

HUMES, Plaintiff in Error, vs. THE UNITED STATES	Error to the Circuit Court of the United States for the Western District of Tennessee

PETITION AND BRIEF FOR RE-HEARING BY PLAINTIFF IN ERROR.

JAMES M. GREER,
Counsel for Plaintiff in Error.

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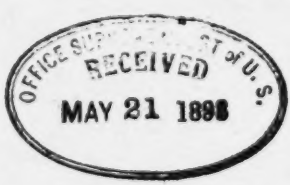

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Supreme Court of the United States,

No. 150, OCTOBER TERM, 1897.

HUMES, Plaintiff in Error,		Error to the Circuit Court of the United States for the Western District of Tennessee
vs.		
THE UNITED STATES		

PETITION AND BRIEF FOR RE-HEARING BY PLAINTIFF IN ERROR.

JAMES M. GREER.
Counsel for Plaintiff in Error.

PETITION FOR REHEARING BY PLAINTIFF IN ERROR.

Your petitioner most humbly prays for a rehearing in his case.

The judgment was rendered herein on towit Monday, April 25th, 1898. It is on section 5485 R. S. which, as we understand, contains two clauses, 1st wrongful withhold-

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ing, and 2d retaining greater compensation than allowed by law.

The first part of the 8th and 11th assignments relate to a failure on the part of the court to give certain instructions. The 2d, 4th, 5th, 6th, 7th, and part of the 8th 9th and 10th assignments relate to error in the instructions given by the court The 12th and 13th assignments of error are based upon the fact that the verdict was against the overwhelming weight of the evidence. The 3d assignment of error is based upon the refusal of the court to give an instruction which was requested.

We state the ground for rehearing under three heads, and in two views of the case under each head.

1. Do the repeated, uniform and numerous decisions of this Court sustain the opinion in the case at bar? And

2. Do the decisions cited in the opinion sustain it?

To both we do most earnestly but respectfully submit that they do not.

And we shall have nothing to say save to put the correctness of the opinion in the case at bar to the test by comparing it with the former repeated and uniform decisions of this Court.

We understand the opinion in this case to be that this Court thought it was precluded from considering the questions raised in the view that they were not sufficiently technically so by the bill of exceptions.

We understand the line of decisions of this Court to be that all that is required upon which to properly base an exception or objection, or assignment of error, is that

the attention of the trial court should be called to them.

If this is done it is all that is required or needed to be done. This was certainly done in writing in this case under a certain number of heads.

This was an oral charge, spoken off to the jury by the trial court. The court stenographer took it down as the judge talked it off, and wrote it out in long hand, and as soon as it was done we wrote out the exceptions and objections, and which are in the exact words of the assignments of error here, a literal and verbatim copy of the same; and the trial court passed on them, and each of them, and finally put his rulings on them in writing, on the motion in arrest of judgment.

The specified words and parts of the charge and refusal to charge objected to, and then and there excepted to, were set out in writing, and the trial court ruled on each of them in writing, and overruled and disallowed them, and stated at great length and with much argument his reasons for so doing. R. p. 15.

It would thus seem that all the law required was fully complied with; and all we beg for is that this Court will examine, and say whether or not the disallowing of the same was right or wrong on the law and the facts.

We do not understand that the overwhelming weight of the decisions of this Court are in accord with the rules of law as announced in the opinion in the case at bar.

We understand in a criminal case the uniform ruling of this Court is that it will determine the real merits of the case on the law and the facts.

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That it will not simply and solely, on purely strict technical rules as to the form of the pleading, without any merit in them at all, refuse to examine the record, and the question of guilt or innocence on the facts and the law.

It might be in a case simply involving matters of dollars and cents, and of property and land, that this Court might adhere to these real purely technical rules of the form of pleading, without any merit, and even in some cases where such a result might operate seemingly to defeat the ends of justice.

But certainly the great weight of the decisions of this Court do not, as we read them, or understand or see them, we most earnestly and respectfully submit, go to that extent in cases which involve the life and the liberty of the citizen.

It might be so where he was simply subjected to a fine. Or if it was a short imprisonment in a jail of a few weeks or months the rule of law invoked might be so. But in a case like the one at bar, while only called in the statute "a high misdemeanor," but which still carries with it the penalty of depriving the accused of his liberty and all his rights of citizenship, and condemning him to all the infamy, ignominy and never ending shame to him and all his, it cannot be so.

If in the deprivation of the life and liberty the uniformity of the decisions of this Court is that way we fail to see, read or understand it so from the numerous and repeated opinions.

We understand the trend and the great weight of the decisions of this Court to be that in cases involving life

and liberty this Court will always look to the real and true merits of the case on the law and the facts, without any regard to what the simply technical form of the pleading in the record is. In other words, we understand the uniform trend and the great weight of the decisions is that this Court will not take away from the accused his life or his liberty, and all those inalienable rights of citizenship, and seal his doom for all time upon pure technical rules in regard to the simple form or mode and shape of the pleading.

This Court will not sacrifice substance for the sole purpose of requiring compliance with rules for the pure technical form of pleading. But as the court of last resort, the final arbiter, it sits to put aside pure and simple technical form in simple rules for pleading, and reaches and administers the law on the merits and the facts, and for justice sake alone. Sits to reach the substantial ends of justice and right alone, and to administer it without any regard to the pure and simple technical rules for the form of pleading alone.

The learned lawyer, senior counsel in the case at bar for plaintiff in error, whose soul and body was racked with the disease that in a few short weeks after this trial in the lower court caused his sad and untimely death, may have, because of his extreme ill health, inadvertently not drawn his exceptions with all that technical preciseness that would bring it up to the old common law form of rigid technical pleading.

But surely this Court will not decline to examine the questions of law and fact in the record, and determine the guilt or innocence, and will not condemn for an infamous

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crime the accused, and deprive him of his liberty, without an examination, without a hearing, and without a trial, we most earnestly, humbly and respectfully submit.

In the Crain Case Supra there was no instruction. There was no request for instruction. There was no exception. And there was no assignment of error. And yet this Court examined into that case in the very fullest manner and the most minute detail, and reversed it. In that case Mr. Justice Harland said the courts ought not to countenance the careless manner in which records of cases involving the life and liberty of an accused are often prepared,

"Before a court of last resort affirms a judgment of conviction of at least an infamous crime," etc.

"It is not a matter of form only, but of substance in the administration of the criminal law, and is not cured, but involves the substantial rights of the accused."

We would like very much to comment thus at some length on decisions of this Court, cited beyond, but for want of time, and for fear of its being a repetition of the same, we forbear, only begging this Court to consider fully the authorities cited supra.

In the opinion in the case at bar this Court say:

"We cannot regard as error the omissions of the court to give instructions which were not asked."

In Hickory vs U. S. supra Mr. Chief Justice Fuller said:

"Even in that view the exception might be held equivalent to a request for the qualification."

See also other authorities cited beyond.

The opinion in the case at bar says further:

"Nor are the instructions which were given, but not excepted to, subject to review."

Wigborg vs. U. S. 656 Mr. Chief Justice Fuller said:

"Nor was any exception taken, although they are now assigned as error."

"And although this question was not properly raised yet if a plain error was committed in a matter so absolutely vital to defendants we feel ourselves at liberty to correct it." (p. 658.) "And that we may properly take notice of what we believe to be plain error, although it was not duly excepted to." p. 659.

"We are of the opinion that adequate proof to that effect is not shown by the record, and that as the case stood, the jury should have been instructed to acquit them, (p. 660), and after subjecting the rulings of the court below to that careful examination which the discharge of our duty requires."

Agnew vs. U. S. 165 do 52:

"We have carefully explored the evidence and considered the errors assigned, whether pressed in argument or not." Even where four were abandoned, he says.

Davis vs. U. S. ib 375, Mr. Justice Brewer said:

"As it is a criminal case, we will carefully examine the record with all the assignments of error, in order to see that no injustice has been done the defendant."

Acres vs. U. S. 194 to 390 :

"It may be premised that the exceptions to this charge are taken in the careless way which prevails in the western district of Arkansas. But passing this, and considering the charge as properly excepted to," Stevenson vs. U. S. 162 do 315. Mr. Justice Peckham said:

"A review of the evidence at the trial of the defendant in the court below shows that there was error in the refusal of the court of the request of defendant's counsel to submit the question to the jury."

Logan vs. U. S. 144 do 282, Mr. Justice Gray said:

"But the motion in this case appears to have been intended and understood to include an exception. And the same question is distinctly presented by the judge's refusal to instruct the jury as requested and by instructions given by him to the jury."

Hickory vs. U. S. 160 do 413, Mr. Justice White said:

"It is contended by plaintiff in error that these assignments . . . are not sufficiently specific to merit consideration, because they do not point out the exact words of the charge complained of. The assignments are in exactly the same language as were the exceptions taken during the trial and which the record declares defendant presented at the time; that the assignments do not in terms state the precise language used by the court, they yet indicate with sufficient clearness to enable us, from a mere inspection of the charge, to ascertain the particular matter referred to. The rule in relation to the exceptions to instructions is that the matter excepted to shall be so brought to the attention of the court . . as to enable the judge to correct error, if there be any, in his instructions . . and this is also requisite in order that

the appellate tribunal may pass upon the question raised without being compelled to read the record to ascertain it. It is here unquestionably on the very face of the bill of exceptions were taken . . and that the trial court was fully aware of their import and had the opportunity to make such correction, if any, as its judgment may have deemed necessary to prevent the charge from being misunderstood by the jury. This is made out clear not only by the language of the bill of exceptions, but also by the charge itself, which contains a statement by the court, entirely inconsistent with a possibility of there having been any surprise or misconception."

Same case, 151 do 316, Mr. Chief Justice Fuller said:

"The trial judge could not have been in doubt as to the particular part of the charge objected to, and as his attention was called to the matter, could have modified or withdrawn it, if he had thought necessary to do so, and the portion excepted to with sufficient precision, so far as this court is concerned."

"Nor did the exception embrace other than the specified statements objected to."

"Again, the exception was not to the omission of the court to charge upon a particular point, in which case, in the absence of requests that that should be done, it would not have been well taken (R. R. vs. Polk, ante 73), although even in that view the exception might be held equivalent to a request for the qualification and counsel signified out of abundant caution what in their judgment would remove their ground of complaint. We hold, therefore, that the point was sufficiently saved."

Theid vs. Utah, 159 do 521, Mr. Justice Brewer.

"One object of an exception is to call the attention of the circuit judge to the precise point as to which it is supposed he has erred, that he may then and there consider it, and give new and different instructions to the jury, if in his judgment it should be proper to do so."

Bank vs. Eldred 143 do 298, Mr. Justice Gray.

The exceptions in the case were taken at the trial. They are written out and embodied in a formal bill of exceptions presented to the judge at the same time; allowed and signed by the judge and filed with the clerk during the same term. The bill of exceptions was reasonably drawn up and tendered. It states in writing distinctly the rulings complained of and the exceptions taken, and the duty of the court of error is limited to determining the validity of exceptions duly tendered and allowed.

In Crain vs. U. S. 162 do 632, there was no exception and no assignment of error either, at all.

But just a few lines in the brief in this court—a very short statement saying, "as is fully shown by an inspection of the printed record." And this Court passed on, decided and reversed that case.

Mr. Justice Harland said: "But an objection is made to the proceedings in the court below which is of a serious character. The record should be a permanent memorial . . and show whether the judgment whereby it was proposed to take the life of the accused, or to deprive him of his liberty, was in accordance with the law of the land. P. 643. In Hoyte vs. Utah, 111 do 579, this court observing that the public has an interest in the life and liberty of an accused person, said: "Neither can be lawfully taken except in the mode prescribed by law. That which

makes the law essential in proceedings involving the deprivation of liberty or life cannot be dispensed with or affected.

"Where the crime charged is infamous in its nature, are we at liberty to guess . . and then guess again.

"Neither sound reason nor public policy justifies any departure from settled principles applicable in criminal prosecutions for infamous crimes. Even if there were a wide divergence among the authorities on the subject, safety lies in adhering to established modes of procedure devised for the security of life and liberty. Nor ought the courts, in their abhorrence of crime nor because of their anxiety to enforce the law against criminals, to countenance the careless manner in which the records of cases involving the life or liberty of an accused are often prepared."

"Before a court of last resort affirms a judgment of conviction of at least an infamous crime, it should appear affirmatively from the record that every step necessary to the validity of the sentence has been taken. P. 645.

"We may have a belief . . but this belief is not founded upon any clear, distinct affirmative statement of record, but upon inference merely. That will not suffice.',

"We are of opinion that the rule requiring the record of a trial for an infamous crime to show affirmatively', (and counsel add that no error was committed in the charge as given or refusal to charge) "is not a matter of form only, but of substance in the administration of the criminal law, consequently such a defect in the record of a

criminal trial is not cured, but involves the substantial rights of the accused."

"The constitution does forbid the deprivation of liberty without due process of law, and due process of law requires a trial by jury and the finding of the facts by the jury and not by the trial judge, and the record of his conviction should show distinctly—not by inference merely—that every step involved, in due process of law and essential to a valid trial, was taken in the trial court. Otherwise the judgment will be erroneous and cannot be made the basis of judicial action without endangering the just and orderly administration of the criminal law. The present defendant may be guilty and may deserve the full punishment imposed upon him by the sentence of the trial court, but it were better that he should escape altogether than that the court should sustain a judgment of conviction of an infamous crime where the record does not clearly show that there was a valid trial."

Allis vs. U. S., 155, do 122, Mr. Justice Brewer.

"A party must make every reasonable effort to secure from the trial court correct rulings, or such at least as are satisfactory to him before he will be permitted to ask any review by the appellate tribunal, and to that end he must be distinct and specific in his objections and exceptions. Rule 4 of this court provides the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts, and these matters of law and these only shall be inserted in the bill of exceptions and allowed by the court."

Justice itself, and fairness to the court which makes the rulings complained of, require that the attention of

the court shall be specifically called to the precise point to which exception is taken, that it may have an opportunity to reconsider the matter and remove the ground of exception. 2 Wall, 329.

If it was intended to save an exception as to distinct propositions embodied in the instructions the attention of the court should have been directed to the specific points concerning which it was supposed error had been committed. 111 U. S., 337.

An exception to all and each part of the charge gave no information whatever as to what was in the mind of the excepting party, and therefore gave no opportunity to the trial court to correct any error committed by it.

140 U. S., 239; 120 do, 183; 130 do, 611; 132 do, 172.

Williams vs. U. S., 168 U. S., 390. Decided November 29, 1897, Mr. Justice Harland.

"But other errors are assigned."

"They must be examined, because if any of them affect the substantial rights of the accused a new trial must be the result in each case."

"In our judgment the court erred in what it said to the jury." P. 397. "Assuming (although the record is silent on the subject) that the accused introduced evidence of his general reputation for integrity."

"The representative of the Government saying in open court and presumably in the hearing of the jury."

Bram. vs. U. S., 168 U. S., 532. Decided December 13, 1897. Mr. Justice White said:

That the objection to the admission of evidence having been twice presented and regularly allowed it was not necessary that it should be renewed at the termination of the testimony of the witness. P. 540. It was allowed and regularly noted.

To say that under these circumstances the objection which was twice presented and regularly allowed should have been renewed at the termination of the testimony would be pushing to an unreasonable length the salutary rule which requires that exceptions be taken at the trial to rulings which are considered erroneous, and the legality of which are therefore to be questioned on error. P. 541.

There can be no doubt that the manner in which the exception was allowed and noted fully called attention to the fact that was objected to because . . . and the overruling of this objection is the matter now assigned as error here. Indeed in the argument at bar no contention was made as to the sufficiency and regularity of the exception.

If found to be illegally admitted reversable error will result.

Both these cases in the 168 United States were reversed and remanded with order to grant new trials.

The record in the case at bar is filled with the exceptions taken and reversed to the trial judge's ruling on the evidence. R. P. 21. If after this Court examines the real question in the case and considers them fully it holds there is no error in them, then we can have nothing further to say.

But we do beg that this Court will consider and pass

on them all. In Agnew v. U. S. 52, Mr. Chief Justice Fuller said, in commenting on the Coffin case as to the presumption of innocence; "But in that case the charge of the court was thought not to have given effect to the presumption of innocence."

This is one of the positions in the case at bar.

The trial judge in his charge to the jury said, "so that there is on that point a hopeless conflict in the evidence in its terms and its implications." R. p. 178. This is repeated several times in the charge.

If this be so then the charge of the trial court did not give effect to the presumption of innocence or reasonable doubt either.

And this is certainly contrary to law as announced in the Agnew case above and the Coffin case 156 U. S. 458. The very full opinion by Mr. Justice White.

This is plain error as Mr. Chief Justice Fuller said in the Wigborg cited before.

The opinion in the case at bar quotes from a decision this, "It is sufficient that the court gave no erroneous instructions."

We do not combat this, but earnestly insist and only humbly implore this Court to examine the charge with the errors assigned and we submit that all the instructions complained of show they were manifestly erroneous when viewed in the light of the repeated and uniform decisions of this Court.

Under the statement in the opinion in the case at bar of "We cannot regard as error the omission of the Court

to give instructions which were not asked," is cited Isaacs v. U. S. 159 U. S., 491 criminal case.

But for the proposition it is cited for in the opinion in the case at bar, no decision in any criminal case is cited to support it.

It rests for its authority alone on two decisions cited civil cases.

And again it was passed on simply as an incidental question in the Isaac's case.

The first question in that case was on a continuance. And this Court after giving it the very fullest consideration by a citation of the authorities and review of the charge in full of the trial court say : "There was clearly no abuse of discretion." The second question in the Isaacs' case on the proof as to the corpus delicti.

It was too fully examined and passed on by this court.

The real and true questions of merit in that case on both the law and the facts as made by the plaintiff in error there were fully considered and passed on by this court, although there was no appearance or brief for that plaintiff in error.

And for the third question in a few short lines of that opinion the rule of law as contended for in the opinion in the case at bar is announced.

And then this Court in the Isaacs' case say : "Beyond this, however." Not considering or relying on it at all this Court review in full the charge of the trial court on the real point as there made and held there is no error in it.

Pennock v. Dialogue, 2 Pet. 1, 45, cited in the opinion in the case at bar as sustaining the Isaacs case, is a civil suit. For the infringement of a patent, Mr. Justice Story said: "All the testimony, it is very voluminous, and, as no exception was taken to its competency....either general or for any other purpose, it is not properly before this Court for consideration." He says further there was not the slightest necessity of putting any portion of the evidence in this case upon the record, since the opinion of the Court, delivered to the jury presented a general principle of law.

And you find this case cited chiefly in the reports under the head of patent law-abandonment-infringement.

True it states in a general way the point announced in the opinion in the case at bar.

But the real question, the main question, the principle question, the chief question and issue in that case for the Court to decide was one of patent law. The great question of abandonment in patent cases. What constitutes it etc., and what was an infringement of a patent.

And this Court there decide that real question in that case.

And as we understand the decision has been a controlling authority on those two great questions in patent law of abandonment and infringement ever since.

And so far as the rule of law announced in the case at bar in the 2 Pet. case it only arose incidentally on a question of practice in a civil case and did not go to the merits of the controversy at all.

And Mr. Justice Story said the opinion of the court

presented "a general principle of law." And that general principle of law which it presented was one of patent law. And this court settled it.

R. R. Co. vs. Volk, 151 U. S., 73-78—another civil suit —an action for personal injuries—is the second case in the opinion at bar cited to sustain the rule in the Isaacs case.

The question in the Volk case was contributory negligence. And the rule of practice is announced and authorities cited to sustain it. One from England, a civil suit; the 4 Cranch, 62, case—action for debt; Smith vs. Carrington; the 2 Pet. patent suit, and the cases of Express Co. vs. Kountz, 8 Will., 342—civil suit to recover the value of a lost package of gold dust. This court said: "The case involves two questions—one of jurisdiction and the other on its merits." And after disposing of the question of jurisdiction, says:

"There remains to be considered the merits of the case—the question is one of negligence."

This court says:

"No exception was taken on the trial to the admission or rejection of evidence. And so they were not before the court."

And after thus fully passing on all the questions in the case and deciding them in the course of the opinion the simple rule mentioned is announced.

Shuttle vs. Thompson, 15 Wall., 164—action of ejectment. All the questions in this case were passed on and decided by this court. And incidently the rule is mentioned. But even after it is this court said:

"And in the part of the charge to which exception was taken we perceive no error."

Every single one of them civil cases—not criminal. Or announcing a controlling rule of practice in criminal cases, so far as we are able to understand from the opinions.

We do not gather from them that any idea of criminal cases was considered at all, or intended to be passed upon.

In the Volk case this court passed upon the real questions in that case outside of and beyond any pure idea of practice. This court affirmed the $8,000 judgment, with 10 per cent. added by this court, because it was of the opinion that the appeal was simply for delay only.

Mr. Justice Gray said in the Volk case:

"In this country the rule as to exceptions seems to be more liberal."

So in the Volk case the question stated in the opinion in the case at bar seems to have been only an incidental question of practice made in that record, because the real questions in that case were on exemplary damages, competent evidence, contributory negligence, and the judgment was affirmed with added damages. All the vital questions in that case were considered and decided.

Of course we all bow our heads to the great master mind of the law in our country, Mr. Chief Justice Marshall, who delivered the opinion in the 4th Cranch case in 1807. He was then blazing along nearly a century ago in the wilderness of our country the eternal land-marks of the law.

And true, indeed, it is he settled in that opinion one

of the most vital principles in our jurisprudence. And that was that if a party to a suit or his counsel thought the case before the jury presented a certain question on the law and the facts he had a right to request the trial judge to charge it.

And if the trial judge refused to consider that request at all or to allow it to go to the jury, then if it was a proper request, so determined afterward by this court, then the case would be reversed upon that ground.

Theretofore this principle was unknown to our law.

As Mr. Justice Gray says in the Volk case, this is not now the rule of law on this question of practice in England. Nothing is error except those made at his own suggestions by the trial judge. You have no right to ask his reversal or to ask him to consider instructions or requests to instruct on any question of law or fact, though your request be unquestionably the law and that of the trial court manifestly wrong in its words and on its very face.

This was the one vital principle of law that Mr. Chief Justice Marshall, the grand old giant of the law, was laying down as an immortal rock-bed principle for the jurisprudence of our country to rest upon. It grew out of that undying idea in this grand man's mind to throw around us those safeguards to our imperishable birth claims of personal liberty and individual rights that would last, yes until time was no more, and even on to the shores of eternity itself.

And that any such view would ever be taken that his opinion in that civil case would ever be construed to say

to a private citizen in the face of an infamous charge that for that reason his case could not be looked into or passed upon by this court is simply beyond my comprehension.

Say to a person at the bar, whether just or unjust, we cannot for certain technical rules of pleading look into your case. And you must lose your personal liberty, as we are unable because of those rules to consider your appeal or pass upon it or examine it. And you must suffer for an infamous charge, as by the reason given we cannot look to see whether we should or should not grant you any relief. You must lose all your individual rights of citizenship because we cannot on account of these simply technical rules of the form of pleading, without any regard whatever to the merits on the law or the facts, look into, examine or pass upon the questions of merit or demerit in law or fact, error or no error, in your case.

It may not be your fault, plaintiff in error. It may have been the inadvertent mistake or oversight of your counsel in the court below because of his extreme ill health, which shortly resulted in his death, but whatever the cause may be your case cannot be heard, looked into or examined here, and you must lose your personal liberty and all your individual rights of citizenship and be condemned to eternal doom and infamy and shame to all yours solely and alone because these simply technical rules in regard to the form of pleading have not been complied with by your counsel, and we must decline to see if we can give you any relief.

If this be so then with the deepest sorrow, earnestness and respect we humbly submit and in a spirit of the greatest humility this plaintiff in error is the only one

who ever stood at this bar and was told by this Court that he must be condemned because for the simple rules of technical pleading he could not be heard.

He is the first in the history of this Court who was told he must suffer and lose his personal liberty and all his individual rights of citizenship because the Court could not look into, consider or pass on his case or his rights, simply and solely on account of a non-compliance by his counsel with the technical rules of pleading in regard to their form, and without any regard whatever to any question of merit in his case on the law or the facts.

And God grant that it may never even be told to him. That his young life be never consigned, my God, to what is such a never-ending and living death and living hell. And that his helpless wife and little children be spared, oh God, from such a never-ending and living death and hell of eternal ruin and eternal shame.

We cannot believe it to be intended to be so, and we have never before heard it claimed that an accused should be condemned and refused a new trial and a hearing on the real and true merits of his case alone for the sickness, death, inadvertance, oversight, mistake, inexperience or fault of his counsel in lack of familiarity with or knowledge of the simple technical rules as to the form of pleading and failure to comply with the same. Because his counsel was not sufficiently acquainted with or knew well enough those rules alone to comply with them in writing exceptions or assignments of error. Lawyers are of course no more infallible than others. They make mistakes often as well as others.

But we do know there is a line of cases holding that a

court will not condemn a man for the sickness, death, mistakes, inadvertances, inexperience and oversights of his attorney alone.

But where the record shows many will on this ground alone reverse the case and give the accused a chance to again get a fair and impartial trial for his personal liberty and individual rights and where such mistakes can be obviated.

We recall an unreported case decided by the Supreme Court of the State of Tennessee where it held passing on the provision in the Constitution of the State that the accused was entitled to be represented by counsel, that it meant counsel who were familiar with all the modes of practice in such cases and if the bill of exceptions in the record showed that by reason of sickness or death of counsel, or because of his inadvertence, oversight or mistake it was not properly drawn, that the case for that reason alone was reversed and remanded for a new trial in order that the accused might get a trial on the real and true merits of the case, and where such mistakes can be obviated.

In the opinion in the case at bar under the head:

"Nor are instructions which were given but not excepted to subject to review." To sustain this text two cases are cited.

Tucker vs. U. S. 164 U. S. 170—murder.

In that case this Court in a full opinion passed on all the questions there involved and in three lines at the end of the opinion states the text given.

And the only case cited to sustain the rule is the U. S.

vs. Breitling, 20 How. 252—civil suit against surety on bond.

This Court there says: "The exception brings up the charge of the Court to the jury, but not the admission of evidence which was objected to on the trial, but to the admission of which no exception was noted."

And this Court decided that case on the question involved in it. And incidentally announced this rule of practice as to exceptions to the admisability of evidence in a civil case. It is much like Mr. Justice Story's opinion on the question of evidence in the 2 Pet. patent case.

St. Clair vs. U. S. 154 U. S. 134—murder. This case like all those cases we have found, examined and passed on all the questions in the case. Seven of them before this one was noticed. And this is under the VIII head. In two lines it simply speaks of the proposition and cites the Tucker case alone to support it, and then refuses to sustain the VIII objection, but goes on and rests the ground of refusal on the Penal Code of California—a section there cited, and then passes on the ninth question in the case. The question is here too just incidentally referred to and the overruling of the objection placed on another and entirely distinct ground.

II.

We earnestly but respectfully submit this Court misinterpreted the point we made on the charge which it held was properly excepted to and the exception properly reserved.

We do not at all object to the part of the charge quoted by this Court in the opinion in the case at bar.

It is that part of the charge that follows right along after where the opinion quits quoting it that we think is beyond all question shown to be reversible error in the light of the repeated and uniform decisions of this Court on the question there made; i. e., the invasion and usurpation of the province of the trial judge in his charge, in that after telling the jury there were two questions of fact for them to determine, then he withdraws from them in his very next breath all consideration of the first fact.

To what we object is that it was certainly proper for this question of fact to go with the other to the jury to find.

And not to be found by the trial judge.

He says:

"Now, desiring to get the jury down to the real issue in this case as it comes to you, leaving the jury free to find for itself, the court is of opinion that, considering in reference to either the Government's proof or the defendant's, and with reference to the written evidence or the oral,

"That the defendant was instrumental in the prosecution of these claims in such sense as that if he withheld the money he would be within the provision of the statute and guilty.

"That brings you to the fact, then, of whether or not he did withhold the pension claims."

This was error, because it took from the jury all consideration of the evidence tending to show that the defendant was neither the attorney, agent or person instru-

mental in procuring or prosecuting the pension claim of either Anderson or Bloodson. This being a question of fact, as to whether the defendant was or was not such agent, attorney, or person procuring said pension money, it was the province of the jury and their duty to determine such fact for themselves from the evidence, and the court could not instruct them upon this as matter of law.

Again the trial court says:

"That is the real issue in respect to this Anderson, viz.: Who got the proceeds of that check?"

"If Mr. Humes got and retained the proceeds, or retained any part of it above the Notary's fee, then he is guilty; whereas if Anderson got it that is the end of the case so far as that count is concerned; or if, under the rule stated, you have a reasonable doubt about how that is, the defendant is entitled to an acquittal. R., p 176.

Again he says:

"So that did he withhold from Anderson all or any substantial part of that pension?" R., p. 178.

"If so, he is guilty, and you should convict him; and if not, and if you have a reasonable doubt, acquit him."

Thus it is seen the trial court usurped and invaded the province of the jury in his charge in that nine separate times he withdrew from them the finding and consideration of what he himself first charged was the primary fact that they themselves must find as a condition precedent before there could be any conviction.

Who found this primary fact that it was charged the

jury must find as a condition precedent before there could be any conviction? The trial court; and so stated to the jury.

It may be suggested that in the first part of the charge the court used the words, "leaving the jury free to find for itself, the court is of opinion that," etc.

In the very next breath, where he repeats that charge, does he say again, "leaving the jury free to find for itself, the court is of opinion that," etc. No. There is no even apparent limit on his charge this time. He says: "That brings you to the fact, then, of whether or not he did withhold these pension claims."

What has become of the primary fact that he told the jury they must first find as a condition precedent before there could be any conviction? What is it "that brings you to the fact, then, of whether or not he did withhold these pension claims?"

It was that the trial court had found the primary issue of fact—condition precedent for them which he at first had twice submitted to them, and he so charged them what it was, i. e., that defendant was instrumental in the prosecution of these claims in such sense as that if he withheld the money he would be within the provisions of the statute and guilty.

He next says: "And that is the real issue."

There is no even apparent limit on these words. He does not tell them this time, "leaving the jury free to find for itself, the court is of opinion," etc.

He tells them, "and that is the real issue."

What has become of the primary other real issue—condition precedent—that he himself had twice charged them before, they themselves must first find before there could be any conviction?

He himself has found for them what that primary fact—condition precedent to any conviction—was, many times before and afterward.

And for the fourth time, as if to clinch it, he charges them: "If Mr. Humes got and retained the proceeds, or retained any part of it above the Notary's fee—"

What then is the only sole and solitary condition upon which he puts the case to them on?

"Then he is guilty."

This time does the trial court leave it to the jury to find whether or not the defendant belonged to that class of persons who would be with the provisions of the statute, and his guilt or innocence depended primarily on that as a condition precedent to their right to convict him? No. The trial court has long since in his charge three distinct times passed that issue of fact by finding it himself and so charging the jury, and now he tells them: "If Mr. Humes retained it, then he is guilty."

The trial court has changed it—defendant's guilt or innocence now rests with them alone on the solitary issue of fact as whether or not he retained it.

Does the trial court tell them this time "leaving the jury free to find for itself, the court is of opinion?" No. Leaving out of consideration all things else—he says if Mr. Humes retained it, then he is guilty.

He next says:

"Whereas, if Anderson got it, that is the end of the case, so far as that count is concerned."

"Or, if under the rule stated you have a reasonable doubt about how that is, the defendant is entitled to an acquittal."

Do these two charges look much like leaving the jury free to find for itself, or that the trial court could be much of the opinion that the jury were left free to find for itself whether or not the defendant was instrumental in prosecuting these claims for pensions before the Pension Office?

Again he says:

"So that did he withhold from Anderson all or any substantial part of that pension?"

"If so, he is guilty and you should convict him."

"If not, or you have a reasonable doubt, acquit him."

Do these three charges look much like the jury were left free to find for itself, or that the court was simply expressing an opinion as to whether the defendant was instrumental or not in prosecuting these claims for pension before the Pension Office?

Could language be plainer, showing that the court had time and time again in his charge taken away from them all consideration of such fact, and had time and time again so charged them?

In fact, there was no limit upon the charge, and if one was intended it is strange indeed that so many times the limiting words should have been omitted altogether.

If you examine the charge again you will readily see the plain meaning of it was to the jury this: I charge you that taking all the evidence in consideration, both the

Government's and the defendant's, written and oral, the defendant was instrumental in prosecuting these claims for pension in such sense that if he withheld the money he would be within the provision of the statute and guilty.

If the trial court intended to leave the jury free to find for itself and simply to express his opinion, that is reversable error under the repeated decisions of this court, cited beyond, where it is the finding of the primary fact.

But the use of the expression, leaving the jury free to find for itself, the court is of opinion, is a meaningless nothing when called a limitation on a charge where the judge told the jury that from all the evidence, the Government's and defendant's, written and oral, the defendant was instrumental in prosecuting these claims in such sense that if he withheld the money he would be within the provisions of the statute and guilty.

His reference to it as both the Government's proof and defendant s, written and oral, but fixed it more firmly in the minds of the jury as settling the primary fact by the judge in his charge to them. After stating it in such unqualified terms, if he had said a thousand times, leaving the jury free to find for itself, the court is of the opinion, etc., how was it possible for him to have effaced from their minds the fixed fact as he had stated to them he had found it?

The defendant could not be within the statute and punished for a violation of law, if he violated it, unless the jury first found that he belonged to this class. Yet in the face of so plain a law the judge finds this fact for them.

If he intended to leave the jury free to find for itself and only to express an opinion to which they should pay

not the least bit of heed in the world, why did he tell them,

"Now, desiring to get the jury down to the real issue in this case?" Why he himself had twice before charged them that there were

two real issues in this case.

If he intended to leave to them the finding of the

two real issues in this case?

Why did he tell them:

"Now, desiring to get the jury down to the real issue in this case?"

What had he done with the

other real issue in this case?

If he intended to leave the jury free to find for itself, why in his very next breath did he say:

"That brings you to the fact then, of whether or not he did withhold these pension claims?"

What has the judge in this part of his charge done with

The other real issue in this case?

Then he says,

"And that is the real issue."

Why we are told he intended to leave the jury free to find for itself.

If so, what has he done with the

other real issue in this case?

If he intended to leave the jury free to find for itself, why did he say next, "If Mr. Humes got and retained the proceeds, or retained any part of it above the notary's fee, then he is guilty."

What did the Judge do with the

ther Oreal issue in this case?

Not only did the trial court usurp and invade the province of the jury in this case, and find the first fact for them that he himself had twice before charged that they themselves must first find before there could be any conviction, but he determined for them and so charged them what that fact was, when it was the basis of this accusation—the primary fact—condition precedent to any conviction. In short, if he had reversed his charge and found for them, and so charged them, that from all the facts in the case, the Government's proof and defendant's, oral and written, defendant was in fact guilty of wrongfully withholding pension money from pensioners, the jury could not find guilty unless they found defendant was the agent, attorney or other person instrumental in prosecuting these claims for pension before the Pension Office.

Unless he belonged to that class they could not convict him, although he admitted he withheld the money. Yet the trial court usurped and invaded the province of the jury to such an extent as to tell them what that fact was.

He, in effect, charged the jury that the defendant belonged to that class, and as such he was guilty.

The court, if the defendant had been on trial for murder, had just as well charged the jury he was satisfied, from all the facts, the defendant had done the killing, and their only province was to return a verdict of murder in the first degree. The effect of it is, the defendant has not been tried by the jury. He has been tried by the court and found guilty by the court. He has been deprived of his liberty without due process of law.

In Stevenson vs. U. S., 162 U. S., 341, Mr. Justice

Peckham said: "And yet this question of fact is, under the evidence in the case, determined by the trial court as one of law and against the defendant.

. . . . . .

"But why should the other issue be taken from the jury and they not be permitted to pass upon it as a question of fact?"

. . . . . .

"We only decide that the question should have been submitted to the jury as well as the other question of fact. For the error in refusing to do so, the judgment of conviction must be reversed and the cause remanded to the court below with instructions to grant a new trial."

In Mills vs. U. S., 164 U. S. 646, Mr. Justice Peckham said: "No portion of the charge of the court, under such circumstances, can be said to be harmless if it did not state correctly and fully the law applicable to the crime, even although it may be urged that in other portions of the charge the correct rule was laid down."

"How much of this testimony was credible, and what inference ought to be drawn from it all, were matters for the sole consideration of the jury, and the mere charge taken for proper proof of the crime on the part of the person on trial,"

In Hickory vs. U. S., 160 U. S., 413: "Putting this language in connection with the 'many other charges,' it is justly to be deduced that its effect was to instruct that the defendant was 'guilty,' and therefore the only province of the jury was to return a verdict of guilty."

"It is true that a subsequent portion of the charge refers to evidence . . . as proper to be taken into consideration as evidence. But these qualified remarks did not recall the undue weight which the previous language had affixed to the facts to be considered by the jury."

"On this subject also it is true the charge thus given was apparently afterward qualified by the statement that the jury had a right to take the fact . . . into consideration, but these words did not correct the illegal charge already given. Indeed, taking the instruction . . . with the qualifying words subsequently used, they were both equivalent to saying to the jury that they were, in considering the facts, to give them the weight which, as matter of law, the court declared they were entitled to have, that is . . . so well settled as to amount virtually to a conclusive proof of guilt."

In Starr vs. U. S., 1b3 U. S., 626, in considering the power of a Federal court to comment in charging a jury on the evidence, we quoted with approval the language of the Supreme Court in Burke vs. Maxwell, 81 Penn St., 150, saying:

"When there is sufficient evidence upon a given point to go to a jury, it is the duty of the judge to submit it calmly and impartially.

"And if the expression of an opinion upon such evidence became a matter of duty under the circumstances of the particular case, great care should be exercised that such expression should be so given as not to mislead, and especially that it should not be one-sided. The charge given in this case violates every rule thus announced. It was neither calm, nor was it impartial. It put every de-

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duction which could be drawn against the accused from the proof, . . . and omitted or obscured the converse aspect. In so doing it deprived the jury of the light requisite to safely use these facts as means to the ascertainment of truth. Nor can it be considered that the language used corrected the error. . . . Indeed, taking the language of the charge which follows the foregoing words, it must have conveyed by the strongest possible intimation the impression to the jury tnat the case before them was controlled by the general rule previously stated to them by the court, although other cases might be an exception to such rule."

"Measuring the correctness of the charge now considered by these principles and authorities, it is at once demonstrated to have been plainly erroneous."

"It magnified and distorted the proving power of the facts."

"Considering the entire context of the charge, it practically iustructed that the facts were . . . conclusive proof of guilt." P. 421.

. . . . . .

"It is apparent that this part of the charge is replete with the errors which we have already found to exist in the matter which we have already considered. But the instruction contains an additional error of so grave a nature that we call attention to it in order to prevent its recurrence."

"The manner of contrasting the testimony of the accused . . . was clearly illegal. . . . This contrast thus made could have conveyed but one meaning to

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the jury, that is, a warning that the testimony of the accused was to be considered by them as of little or no weight because he could be bribed—he could be dragged or seduced into perjury. Such denunciation of the testimony of the accused is without legal warrant. Indeed, this instruction, besides giving rise to this error, was also, if possible, more markedly wrong from the implications which it conveyed to the jury. It substantially said to them the circumstances . . . cannot be bribed, but the defendant can be; therefore, you must consider that these circumstances outweigh his testimony, and hence it is your duty to convict him."

In Allison vs. U. S., 160 U. S., 207, this court says: "The question was for the jury to determine, from all the facts and circumstances adduced in evidence. . . And it was for the jury to test the credibility of the defendant as a witness . . . uninfluenced by instructions which might operate to strip him of the competency accorded by law. We repeat what was said by Mr. Justice Shiras, for the court, in Hicks vs. U. S., 150 U. S., 452. . . . 'And perhaps a judge cannot be considered as going out of his province in giving similar caution as to the testimony of the accused . . . if the judge, to whose lightest word the jury properly enough give great weight, should intimate that the dreadful condition in which the accused finds himself should deprive his testimony of probability . . . The policy of this enactment should not be defeated by hostile intimations of the trial judge, whose duty it is to give reasonable effect and force to the law."

"While the trial judge may not have intended to be understood that the defendant could not prove his defense

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by his own testimony, and had it in his mind simply to warn the jury that they should not rely on the defendant's opinion that his conduct was justifiable, but on the facts, or what reasonably appeared to him to be such, we think these remarks had a much wider scope, and must have been so understood by the jury . . . and it was for the jury to say from the evidence what were the facts."

"And if the jury regarded the remarks of the court as applicable generally to defendant's testimony then defendant was practically deprived of its benefit, and the statute enabling him to testify was rendered unavailing. In our opinion the liability of the jury to thus understand these observations was so great that their utterance constitutes reversible error. Nor was this error obviated by what, some time after, . . . was said by the trial judge. . . . If this could be, in any aspect, treated as a modification of the previous assertions of the court, it was too far separated from that connection to permit us to attribute that operation to it, and moreover, it was in itself erroneous. As a witness, a defendant is no more to be visited with condemnation than he is to be clothed with sanctity, simply because he is under accusation, and there is no presumption of law in favor of or against his truthfulness. P. 21.

"Justice and law demand that so far as reference was made to the evidence, that which was favorable to the accused should not be excluded. His guilt or innocence turned on a narrow hinge, and great caution should have been used not to complicate and confuse the issue. But the charge above quoted ignored the evidence tending to show what defendant's proof was; and invited the jury to

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contemplate the spectacle, . . . unrelieved by allusion to defensive matter, which threw a different light on the transaction.

"If there were evidence, and as to this the record permits no doubt, tending to establish that defendant, etc., . . . then this disquisition of the court was calculated to darken the light cast . . . as defendant claimed them to be, and of this he had just cause to complain, even though there were competent evidence indicating the opposite as frequently intimated by the court—intimations which we fear seriously trenched on that untrammeled determination of the facts by a jury to which parties accused are entitled. P. 213.

"The logical inference was this . . . and another and inconsistent inference could not be arbitrarily substituted by the trial court . . . graphic language of the court and . . . speculation as to his mental process was uncalled for,"

"And it is for the jury and not for the judge, passing upon the weight and effect of the evidence, to determine how this must be. In this case it was essential to the defense that the jury should be clearly and distinctly advised as to the bearing, etc. It is open to criticism, and even extenuating circumstances.

"Such an instruction was not only misleading in itself, but it was erroneous in the present case, for the further reason that it omitted all reference to the conduct of the deceased at the time.

"Where the charge of the trial judge takes the form of animated argument, the liability is great that the propositions of law may become interrupted by digression, and

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so intermingled with inferences springing from forsenic ardor, that the jury are left without proper instructions, their appropriate province of dealing with the facts invaded, and errors intervene which the pursuit of a different course would have avoided. Case reversed and remanded for a new trial."

In Davis vs. U. S., 160, U. S., 493, Justice Harlan said; "No man should be deprived of his life (and we add or liberty) under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them, by whomsoever adduced, is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged."

In Alberty vs. U. S., 162, 508, Mr. Justice Brown said: "But what the facts were was a question for the jury."

In Allen vs. U. S., 157, U. S., 657: "Instruction erroneous in withdrawing from jury questions of fact."

In the opinion in the case at bar one of the statements is that it was certainly proper for the case to go to the jury.

If this be so still it but more clearly to us makes out the correctness of our position that the trial judge made the greatest error in his charge by first telling the jury they must find the two questions of fact and then afterwards not letting the case go to the jury on the first question of fact that he first told them they must find.

He took it away from them, and for this error alone, if for nothing else, the case ought to be reversed and a new trial granted.

If this was not invading the province of the jury and

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usurping it under the repeated decisions of this Court, then we must confess we are unable to comprehend what could be. What a trial judge must do or say to make it so.

III.

It is stated that "we are precluded from considering the alleged fact that the verdict was against the weight of evidence, if there was any evidence proper to go to the jury in support of the verdict," in the opinion in the case at bar.

The enunciation of this principle is certainly against that announced in the Wiborg case, 163 U. S., 656, which states the rule of law on this point to be, as said by Mr. Chief Justice Fuller:

"We are of opinion that adequate proof to that effect is not shown by the record, and that as the case stood the jury should have been instructed to acquit them." P. 660.

There are two cases cited as sustaining this text of the opinion in the case at bar, i. e., Crumpton vs. U. S., 138 U. S., 361—murder.

There were three questions in this case and all were passed on in that case.

Moore vs. U. S., 150 U. S., 57-51—murder.

All the questions in this case were passed on and decided. Then at the end of the opinion in a few lines the rule of the text was stated.

Our appeal to this court is that it will consider and pass itself upon the question of whether there is or not error—real and true errors—in the charge as shown by the assignments.

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If it does not show it is the only like case we have been able to find where it did not so hold.

Whether this court, as we humbly pray it to examine the assignments, will not say the parts complained of show real and true error.

There is nothing in our argument itself that we claim is of great value. We only beg that the decisions of this court in the former cases be considered and examined.

The errors assigned are in conformity with the rules of the many decisions as announced.

And the opinion in the case at bar is not in conformity with those decisions.

We respectfully submit it is not sustained by them. It is in direct conflict with them.

This is a criminal case, a prosecution for an infamous crime, the deprivation of liberty and all the rights of citizenship.

The rule of law and decision is different from that in a civil case.

And this court has never before refused, and will not now, to consider and pass on the questions of real merits of law and facts.

We humbly implore this court to pass on the real questions in this case.

The fifth assignment of error was an error which the trial judge himself confessed he erred in in giving it in charge to the jury, because after allowing them for an hour or so to consider it he then sent for them and withdrew it

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himself because he was satisfied it was so palpably wrong and erroneous.

And yet the court seems to consider this not properly excepted to, although it is assigned as error.

And if it was wrong to give it in charge to the jury—so wrong the trial judge himself withdrew it—then it did wrong, it did injury to the plaintiff in error before that jury, prejudiced his case, and this case should be reversed and remanded that that wrong, that injury confessedly done the plaintiff in error should be righted and corrected.

ASSIGNMENT OF ERROR.

It is respectfully submitted that defendant's case may have been prejudiced by the following instruction: "Among other things, you may consider for what it is worth, the fact, as the case comes to you, that Mr. Humes, so far as it is developed, was doing or attempting to do this work for nothing but the notary's fee, as a question affecting his testimony." It is true, after the jury had been considering of their verdict for some time, his honor withdrew this instruction, and his purpose was to do so in such a way as would leave no effect whatever upon the minds of the jury. This is always difficult, but almost impossible in this case, where the charge is in substance the fraudulent withholding of the money of the pensioner, and the circumstances referred to tend to disparage the business and stain the reputation of the defendant. The tendency was to lower and depreciate. Withdrawing, no matter how fully done, it is submitted, could not remove the effect already produced.

And this serves, it may be better than anything else

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in the record, to show how deep seated was the prejudice on this trial against the defendant, that it almost, if not quite, spread itself to the trial judge. Here is where he admits he made an error against the defendant. And how strange an error it is, too. Because he had found for the jury that the defendant was instrumental in prosecuting these claims for pension in such sense that he was guilty if he withheld any part of the money and was within the provisions of the statues.

The defendant's contention all along has been that he never was agent, attorney, or any other person instrumental in prosecuting these claims for pension before the Pension Office, but that all he ever had done, and the only and sole connection that he ever had had with these pensioners or their claims, was that in his purely official and ministerial capacity as United States Commissioner he had administered to them the oaths to the vouchers, and so certified under his official seal, and had never received one cent from them except the usual notary's fee—fifty cents for each paper.

Now, considering that this is made out by the proof to the satisfaction of the jury, the trial court charges the jury that Mr. Humes, so far as it is developed, was doing this work for nothing but the notary's fee, as a question affecting his testimony.

In other words, if the defendant had made out to the satisfaction of the jury his theory of this case, namely, that he was only acting in any manner connected with these pensioners or their claims in his official capacity as United States Commissioner, and got nothing for it but the usual notary's fee—fifty cents; then the trial court

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charges the jury that they must consider this as a question affecting his testimony.

In other words, if he has made out his case upon this line of defense, they must take this fact to discredit the truthfulness of his statement by. If he was not guilty, because the trial judge told them that as a fact he was instrumental in prosecuting these claims for pension before the Pension Office of these parties, and if he has satisfied the jury that he only acted as notary in swearing them to their papers and so certifying under his official seal and only got the notary's fee, then this charge tells them he is guilty anyhow, and you find him so, whether he is under the statute under which he is indicted or not, because if he has proven a perfect defense you must discredit him by that.

If he has made out his case—made out a perfect defense—proved to your entire satisfaction his innocence of this charge and that he is not guilty, then I charge you, says this trial court, that you must take that as discrediting his statement.

In the history of the world did you ever hear it said before that if a man made out a perfect defense to a charge, that a jury must take that making out of a perfect defense by the accused to discredit him by?

In short, don't believe him anyway, or anything he says.

If he has told the truth, don't believe him anyway, discredit him for and by his telling the truth.

In disposing of the V. assignment of error, on motion in arrest of judgment by the trial court, of course the trial

court, did not think it was error to have left the instruction as given, as he says. To discredit the defendant because he had proven the truth of his contention on this point, why, of course, the trial court did not think this was error.

It was withdrawn, so it could not have possibly hurt the defendant—the trial court says (R., p. 15). It was not its withdrawal that hurt, it was giving it in charge. That is the error well complained of.

Every known principle to criminal law of trial, pleading and practice has been violated in the case at bar; and every elementary principle.

And we speak this not from anything we can say but from the decisions of this Court announcing the rules of law.

And all we wish to do is just to compare the rulings in the case at bar with those opinions to show we are right in our contention.

We go by these opinions in what we say; we have nothing else to say.

The accused is guaranteed a trial by jury and a finding of the facts by the jury, and not by the trial judge. He can't invade or usurp the province of the jury. If he does it is unlawful and this Court will reverse the case for such a plain error.

This is the opinion in the Stevenson case by Mr. Justice Peckham, ante.

Legal effect must be given to the presumption of

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innocence, and guilt must be established beyond a reasonable doubt before there can be any conviction.

This is the law of the Coffin case opinion by Mr. Justice White; and the case will be reversed unless it is done.

And if there was hopeless conflict in the evidence in the case at bar, as the trial judge repeatedly said—was the witness of the law—the presumption of innocence that must stand for the accused until overturned by proof short only of absolute certainty, and beyond a reasonable doubt overcome. It surely was not.

This is truly plain error upon which this case ought to be reversed and remanded for a new trial.

There are certainly limitations on the power of a Federal Judge.

In Starr vs. U. S., 153 U. S., 626, Mr. Chief Justice Fuller called attention to the fact that there were limitations on the power of a Federal court in commenting on the facts of a case, when instructing the jury, limitations inherent in and implied from the very nature of the judicial office.

In Reynolds vs. U. S., 98 ib., 168, Mr. Chief Justice Waite also said on the same subject: "Every appeal by the court to the passions or prejudice should be promptly rebuked, and it is the imperative duty of the reviewing court to take great care that wrong is not done in this way. . . ."

In Hickory vs. U. S., 160 ib., 415, this court say: "Admonished by the duty resting on us in this regard, we feel obliged to say that the charge which we have been consid-

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ering crosses the line which separates the impartial exercise of the judicial function from the region of partisanship where reason is disturbed, passions excited, and prej" udices necessarily called into play.

The judge, to whose lightest word the jury give great weight.

His charge must not be one-sided.

It must not be so as to deprive the plaintiff in error of his right to testify.

To denounce a person on trial charged with such a thing to the jury as a swindler. Is that right?

Read, we implore you, the charge in this case.

If from the first word, the first letter, the first syllable, to the end, it is not an argument for the prosecution and the bitterest denunciation of the accused, we have nothing to say.

He tells the jury in the charge that the discrepancies in the witne-ses for the prosecution are immaterial.

That the intelligence and reliability of these witnesses is, of course a minor matter.

And the written record evidence of the absolute innocence of the plaintiff in error is omitted or obscure altogether from the charge.

There is not a single exception or assignment of error that we cannot put our finger down upon as shown by the record, and side by side with them we can show the decisions of this court repeated, uniform and numerous, that sustain every word that is put in it and justifies them all,

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and we can do nothing else but implore this court to consider them, to pass upon them and to examine them in the light of its own decisions. We can ask for nothing more.

And humbly beg that this poor privilege may be granted; and that this plaintiff in error be not driven from this court for the fault, if it be so, of another, to absolute ruin without a trial, without a hearing and without his case being passed on or considered.

If found to be illegally admitted reversible error will result. This is what Mr. Justice White said in Bram vs. U. S., 168 U. S., 532, decided December 13, 1897, found in the last published report of the opinions of this court—one of its very latest and last utterances.

R. p. 21 in the case at bar shows illegally admitted evidence over the objection of plaintiff in error's counsel.

(Objected to by defendant's counsel as leading).

The Court: "It is a little leading, but this old man moves up so slowly, I wish you would let him lead a little." R., p. 21.

In other words, it is an illegal mode of examining a witness, but in the trial of this man for his liberty the trial court does not sustain the objection to this illegal mode of examining a witnesss in the trial of a man on trial for his liberty, but asks that the District Attorney be allowed to proceed a little illegally. This is the astounding proposition that is made.

The prosecution in this case is based for its proof upon what was attempted to be proven by three witnesses as a statement made by defendant to them. To Anderson when he was alone. To the other two when they were

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together. It is a statement claimed to have been made to them by defendant. And it is undertaken to prove that statement in the nature of an oral admission as having been made to them by the accused in a conversation had with them. We find the law on this point as follows, (Commonwealth vs Knapp, 9 Pick., 507, by Putnam, J.): "In a somewhat extended experience of jury trials we have been compelled to the conclusion that the most unreliable of all evidence is that of the oral admissions of the party. . . .

"It is not uncommon for different witnesses of the same conversation to give precisely opposite accounts of it; and in some instances it will appear that the witness deposes to the statements of one party as coming from the other, and it is not very uncommon to find witnesses of the very best intentions repeating the declarations of the party in his own favor as the fullest admissions of the utter falsity of his claim.

"When we reflect upon the inaccuracy of many witnesses, in their original comprehension of a conversation, their extreme liability to mingle subsequent facts and occurrences with the original transactions, and the impossibility of recollecting the precise terms used by the party, or of translating them by exact equivalents, we must conclude there is no substantial reliance upon this class of testimony.

"The fact, too, that in the final trial of open questions of fact, both sides are largely supported by evidence of this character, in the majority of instances, must lead all cautious triers of fact greatly to distrust its reliability."

Greenleaf on Ev., p. 237, sec. 200 (13th ed.), says: "With respect to all verbal admissions it may be observed

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that they ought to be received with great caution. The evidence, consisting as it does in the mere repetition of oral statements, is subject to much imperfection and mistake; the party himself either being misunderstood, or not having clearly expressed his own meaning, or the witness having misunderstood him. It frequently happens, also, that the witness, by unintentionally altering a few of the expressions really used, he gives an effect to the statement completely at variance with what the party actually did say."

P. 118, he says again: "Very great weight ought not to be attached to evidence of what a party has been supposed to have said; as it frequently happens, not only that the witness has misunderstood what the party said, but that by unintentionally altering a few of the expressions really used, he gives an effect to the statement completely at variance with what the party actually did say."

Note p. 238: "It is also well settled that verbal ad missions, hastily and inadvertently made, without investigation, are not binding." 17 Mass., 27.

P. 251, Sec. 214: "But here, also, as we have before remarked in regard to admissions, the evidence of verbal confessions is to be received with great caution. For, besides the danger of mistake from the misapprehension of witnesses, misuse of words, the failure of the party to express his own meaning, and the infirmity of memory, etc.

"The zeal, too, which so generally prevails . . . and the strong disposition in the persons engaged in the pursuit of evidence to rely on slight grounds of suspicion, which are exaggerated into sufficient proof, together with the character of the persons necessarily called as wit-

nesses . . . all tend to impair the value of this kind of evidence."

The most unreliable of all human testimony, these authorities state the rule of law, is that of an oral admission.

And as the record in this case shows, where it was one of only a few moments' duration in a casual conversation; where the parties stood during it. Where the party sought to be charged was in the very midst of a press of many other business matters with many other persons; and where none of the details were gone into, as all the witnesses say.

Was it deliberately and undestandingly made by the party sought to be charged thereby?

It would seem impossible for it to have been done so from the physical facts, as shown in this case. It was only a few moments hurried talk, all the witnesses agree. It was while they were standing. None of the details were pretended to have been gone into. And it was while the party sought to be charged was in the midst of a press with much other business with many other persons. It would surely seem that it lacked every single element that would go to make it up one of deliberation, and understandingly made.

Was the conversation correctly understood by those who undertook to repeat it? Was it correctly reported?

While it is the most unreliable of all human testimony and is to be so considered, yet it was deliberately made by the party making the admission, and was correctly understood and reported by those undertaking to repeat it, then it was competent legal evidence, and should have been submitted to the jury.

But if it is not deliberately and understandingly made and correctly understood and reported, then it was not legal evidence, and should have been excluded.

If the plaintiff in error was not the attorney or the agent of the two persons here named, as the trial judge said, was not so much as contended for in argument by the prosecution, then if he was instrumental at all, it must be an instrumentality in some such sense as the words used in the statute show either as agent or attorney, and if he was not in that same sense, then he was not within the statute, and so not guilty in fact or law.

If on a fair charge the first trial jury found that plaintiff in error was not the agent or attorney or any other person instrumental in prosecuting the claims of Anderson or Bloodson, how could he be within the statute at all?

And if, as a fact, as they found the plaintiff did not withhold the whole or any part of the sums of money herein specified from Anderson and Bloodson, how could he be afterward found guilty under a forced conviction by the charge of the trial judge, save by usurping and invading the province of the jury?

If in a case where A is charged with murdering B, A is on his first trial found not guilty of murder in the second degree, manslaughter or assault, can you again try him on the same indictment on the charge of murder in first degree and on the charge of the trial court force A's conviction for murder while B is alive and walking around?

For all these questions we beg the consideration of the court.

LOWRY W. HUMES,
Plaintiff in Error.

By JAMES M. GREER,
His Attorney.

I hereby certify that in my opinion the foregoing petition for rehearing is well founded in law.

JAMES M. GREER,
Counsel for Plaintiff in Error.

May 18th, 1898.

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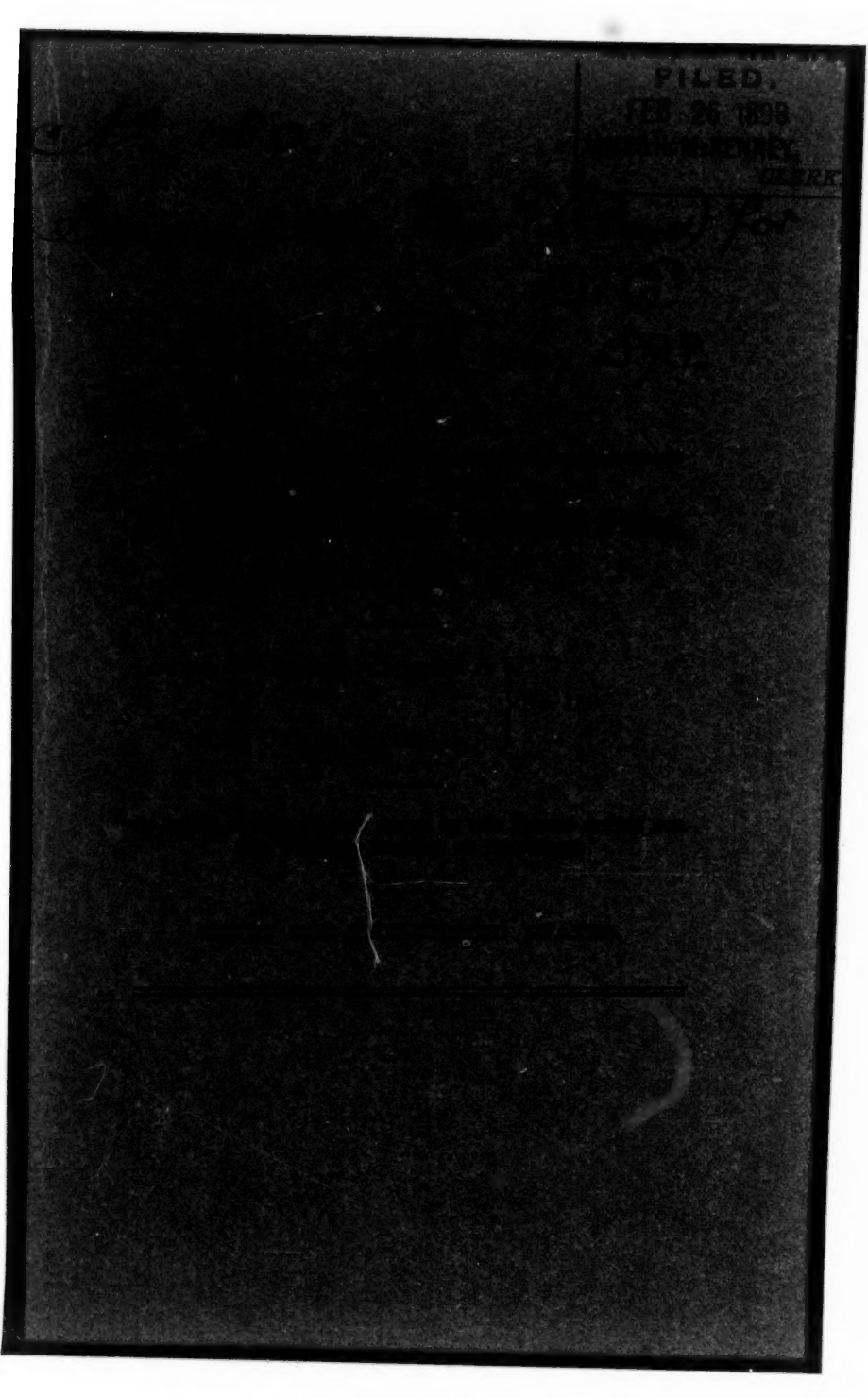
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In the Supreme Court of the United States.

OCTOBER TERM, 1897.

LOWREY W. HUMES, PLAINTIFF IN error,
v.
THE UNITED STATES. } No. 150.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Lowrey W. Humes was tried at the November term, 1895, of the above-mentioned court, and convicted. The bill of indictment in the case contains nine counts, and was drafted under section 5485 of the Revised Statues.

This section reads as follows:

> SEC. 5485. Any agent or attorney, or any other person instrumental in prosecuting any claim for

> pension or bounty land, who shall directly or indirectly contract for, demand, or receive or retain any greater compensation for his services, or instrumentality in prosecuting a claim for pension or bounty land than is provided in the title pertaining to pensions, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to such claimant, shall be deemed guilty of a high misdemeanor, and, upon conviction thereof, shall for every such offense be fined not exceeding five hundred dollars, or imprisonment at hard labor not exceeding two years, or both, at the discretion of the court.

The sections of the Revised Statutes providing for fees for agents, attorneys, and other persons are 4785 and 4786. The fee is limited to $10, except in such cases where the Commissioner of Pensions directs a fee not exceeding $25 shall be paid.

The jury returned a verdict of guilty as to the first and third counts, a verdict of not guilty as to the second, fourth, seventh, eighth, and ninth counts, and a nolle prosequi was entered by the United States attorney as to the fifth and six counts. So, the matters for consideration by the court here are confined to the first and third counts, upon which the conviction and sentence were had in the court below.

The first count, after the formal parts, charges that Lowrey W. Humes

> unlawfully, with force and arms, did wrongfully withhold from William Anderson a large sum of money, to wit, $486.40, the same then and there being part of a pension allowed and due by the United

States to the said William Anderson, and the said Lowrey W. Humes then and there being an agent for and a person instrumental in prosecuting a claim of said William Anderson for the pension aforesaid, contrary to the form of the statute, etc.

The third count charges Humes, in the same language, with withholding $517.20 of the pension of one Isaac Bloodson.

POINTS AND ARGUMENT.

There are thirteen assignments of error, all based upon the judge's charge to the jury, but there were no exceptions taken and noted as a foundation for these assignments. An examination of the record shows that the plaintiff in error requested only one special instruction, which will be found at the close of the charge of the court, page 181 of the record, and was as follows:

> Unless you find from the evidence that the defendant was the attorney, agent, or other person engaged in prosecuting the pension claims of Anderson, Haynes, and Bloodson, then the court instructs you to find for the defendant.

In response to this request the court said:

> I think I have given this instruction in the general charge, and, believing the charge on this point is sufficiently full, further instruction is declined.

To this ruling of the court Humes then and there excepted. This exception is the basis of assignment of error No. 3.

In the charge of the court (Rec., p. 175) will be found the following language:

> Now, with these general observations that are applicable and will be kept in mind by you throughout

> in the case, we come to the testimony in the case; and in respect to that it appears in the statute, as you have observed, that it is necessary in order to make the case against the defendant (first) that he must have been the agent or attorney of the pensioner or he must have been instrumental in the prosecution of the pension claim before he falls within the category of the persons who are subject to the provisions of the statute, and (secondly) he must withhold from the pensioner all or a part of what was due the pensioner claimant; so that two propositions are necessary to be established: That defendant was an agent or instrumental in the prosecution of the claim, and (secondly) that he withheld from the pensioner money that belonged to the pensioner—some part of the pension that was allowed.

This was not only the substance of the request for special instructions, but was much more full and explicit, and completely covered the ground in the special request.

When a jury has been properly instructed in regard to the law on any given subject, the court is not bound to grant the request of counsel to charge again in the language prepared by counsel, or if the request be given before the charge is made the court is not bound to use the language of counsel, but may use its own language so long as the correct rule upon the subject requested be given by the court. (*White* v. *United States*, 164 U. S., 100, 105; *Allen* v. *United States*, 164 U. S., 500; *Davis* v. *United States*, 165 U. S., 373, 378.)

The first assignment of error, part of the eighth assignment, and the eleventh assignment relate to a failure on the part of the court to give certain instructions (pp. 196, 198, 199).

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The record does not show that there was any request for such instructions. In *Isaacs* v. *United States* (159 U. S., 487, 491), Mr. Justice Brown said:

> It is no ground for reversal that the court omitted to give instructions where they were not requested by the defendant. It is sufficient that the court gave no erroneous instructions. (*Pennock* v. *Dialogue*, 2 Pet., 1, 15; *Tex. and Pac. Rwy. Co.* v. *Volk*, 151 U. S., 73, 78.)

The second, fourth, fifth, sixth, seventh, part of the eighth, ninth, and tenth assignments of error relate to alleged error in the instructions given to the jury by the court. (Rec., pp. 196, 197, 198, and 199.)

No exception is shown by the record to have been taken to any portion of the instructions set forth in these assignments. The only exception so far as the charge is concerned is that heretofore noted as the basis of assignment of error No. 3. Instructions of the court are not subject to review, unless the bill of exception shows that they were excepted to. (*Tucker* v. *United States*, 151 U. S., 164, 170; *St. Clair* v. *United States*, 154 U. S., 134, 153.)

The twelfth and thirteenth assignments of error are based upon the alleged fact that the verdict was against the weight of the evidence. In a criminal case whether a verdict is contrary to the evidence can not be considered in this court, if there was any evidence proper to go to the jury in support of the verdict. (*Crumpton* v. *United States*, 138 U. S., 361; *Moore* v. *United States*, 150 U. S., 57, 61.)

The foregoing covers every point which is presented by the record in this case for the consideration of the

Supreme Court. The plaintiff in error has filed an elaborate brief, much of which is devoted to matters de hors the record, and which the court will, it is assumed, not undertake to pass upon.

However, as the plaintiff in error has included in his brief a great deal of the testimony produced upon the trial and has undertaken to present the case in the view that the same should not have gone to the jury, it is perhaps as well, in behalf of the Government, to call the attention of the court to the character of the case and what was really involved in it.

There were only two issues of fact for the jury. The first was whether Humes was the agent or attorney for the pensioners named or was instrumental in prosecuting the claims for pensions; and, if the jury should find that he occupied either relation to the pensioner and his claim, then the second issue was whether he wrongfully withheld from the pensioner the whole or any part of the pension allowed and due the pensioner before it reached the hands of the pensioner. There was ample evidence to go to the jury upon both of these issues, as will be ascertained by an examination of the record.

There was no dispute about the fact that the attorney named in the application for pension of the several persons described in the bill of indictment was one Deadrick; that Deadrick and Humes had their offices together in the same room; that before any of the pensions were granted by the Government, Deadrick went out of business, and that Humes continued in the office and carried on the correspondence and active work necessary for the procurement of the pensions. W. M. Ragsdale, special

pension examiner, testified to and exhibited numerous writings of Humes in the possession of the Commissioner of Pensions concerning the pension claim of Isaac Bloodson and others. (Rec., pp. 105–106.) They were in Humes's handwriting, some of them signed, however, in the name of W. H. Childs, successor to Deadrick & Co. (Rec., pp. 106, 107.)

Some of the correspondence was printed, but directed to be answered at post-office address, 17 West Court street, Memphis, Tenn., which was Humes's office. (Rec., p. 107.) This witness also testified to and produced papers in Humes's handwriting in William Anderson's Case. (Rec., p. 111.) Isaac Bloodson testified (Rec., p. 57) that in the prosecution of his claim he had Deadrick first, then Copeland, and then Humes, and that Humes procured his pension for him. Joshua Haynes testifies (Rec., p. 84) that he applied to Deadrick first, and then Humes took the case and procured the pension; that Humes was in Deadrick's office. Peter Finley testified (Rec., p. 37) that Humes wrote William Anderson, telling him to come in and see him about his papers, and that witness carried Anderson to see Humes in response to this letter, and that it was about the pension claim of Anderson.

Humes testified himself (Rec., p. 125) that Deadrick was the first representative or attorney for the pensioners; that Deadrick had his desk in his (Humes's) office; that he kept the records there, and when Deadrick left Memphis he left his pension records and papers in the table in Humes's office. Humes stated, further (Rec., p. 126), that he then began to receive the mail in reference to

these pension claims and kept up the record; that the office was at first at 13 Madison street; that he (Humes) moved to 17 West Court street in August or September, 1894, and took all the pension papers and files with him and had mail all changed to the latter address. Humes admits (Rec., pp. 126, 127) that he wrote to the Department and made calls in these cases in the name of Deadrick and W. Childs & Co. and in the name of parties, and signed the names of firms and parties.

The attention of the court is called to these parts of the evidence to show that there was evidence sufficient to go to the jury upon the issue of fact as to whether Humes was the agent or attorney of the pensioners, or was instrumental in prosecuting the claims for pensions, and it was for the jury, after hearing the witnesses, observing their manner and demeanor upon the stand, and considering all the circumstances, to say whether or not, as a fact, Humes had been instrumental in prosecuting these claims for pensions, or any of them. When this fact was established to the satisfaction of the jury, then the remaining issue was to be considered, namely, whether Humes wrongfully withheld from these pensioners, or any one of them, any part of the pension allowed and due such pensioners before it reached the hands of the pensioner.

The charge upon the first count of the indictment upon which Humes was convicted was that he wrongfully withheld from William Anderson $486.40 of his pension. The amount due Anderson for arrears of pension, and which was the amount of the first check issued to him, was $536.40. This was admitted to be the amount, and Humes,

in his defense, exhibited the check for $536.40 with Anderson's mark on the back, witnessed by Humes himself and one Purcell. William Anderson testified (Rec., p. 36) that Humes paid him only $50. In this statement Anderson is corroborated by Peter Finley (Rec., p. 38), who carried Anderson to Memphis in response to Humes's letter, and was at the wagon yard, where Anderson came immediately with the $50 from Humes's office and showed it to Finley. Finley was also present with McLaughlin in Humes's office on the same day when Humes stated that he paid Anderson only $50, that his pension was $60, and that he (Humes) had retained $10 as his fee allowed him under the law. (Rec., p. 39.)

H. W. McLaughlin (Rec., p. 47) corroborates Peter Finley as to visit to Humes's office on the day that the $50 was paid to Anderson; also as to the fact that Humes said that Anderson's pension money had come in that morning's mail, $60, and that he (Humes) had retained $10 as an attorney's fee, and had paid the balance, $50, over to Anderson. Humes also stated to this witness, when asked what evidence Anderson had that his pension had been granted, that his (Humes's) books would be evidence that his pension had been granted. Humes stated in the conversation with Finley and McLaughlin that the reason this first payment was small was that it had been granted under the new law. (Rec., p. 48.)

Of course, Humes, in his testimony, denied the statement of Anderson and flatly contradicted Finley and McLaughlin as to their conversation with him and what he said. He also undertook to corroborate himself in this testimony by employees about his office who seem to

have been always conveniently present to witness the mark of illiterate, ignorant pensioners who were unable to sign their names. But there was certainly enough evidence to go to the jury upon the issue of fact as to whether or not he retained wrongfully William Anderson's pension, or any part of it.

Very much the same state of facts exists as to the pension of Isaac Bloodson, for the wrongful taking of whose pension the third count in the bill of indictment is based and upon which Humes was also convicted. Bloodson's check for arrearages was shown to be $567.25. (Rec., p. 61.) Bloodson testifies that Humes got his pension for him, and when he went to get it, about Christmas, 1894, Humes paid him only $50; further, that he never saw any paper or made any mark the day he received the money (Rec., p. 61); that the $50 he received he took to Mrs. Snyder and she counted it. (Rec., p. 59.) Mrs. Snyder (Rec., pp. 70, 71) corroborates Bloodson, and says, in substance, that she counted the money he had on the occasion referred to and there was $50. B. J. Copely, another witness, corroborates Bloodson; says that witness counted Bloodson's money and he had only $50. (Rec., p. 79.)

As in the case of Anderson, Humes denied Bloodson's statement and swore that he delivered him the check, and introduced some testimony on the part of employees about his office which tended to corroborate; but this was, as in the case of Anderson, an issue of fact, to be determined by the jury, and there was sufficient evidence to go to the jury upon the issue.

These matters are called to the attention of the court in this brief in order that the court may see the nature of the controversy which was tried in the court below, and that the judge did not exceed his province in submitting these questions of fact to the jury, and especially is it thought to be due to present this statement from the testimony in the case, as the plaintiff in error has incorporated a great deal of the testimony as a part of his brief. It is not deemed necessary to comment upon the entire fairness and fullness of the charge of the court to the jury. The United States insists that the charge covers every view of the case necessary to be presented to the jury; that it is entirely impartial, and that the principles of law are correctly laid down. It will be found in the printed record, beginning on page 172 and ending on page 181, and the attention of the court is directed to it in case the assignments of plaintiff in error are considered at all. The charge of the court is as follows:

> GENTLEMEN OF THE JURY: The indictment against the defendant in this case and on which he has been put to trial is predicated on section 5485 of the Revised Statutes, which reads as follows:
>
> "Any agent or attorney, or any other person instrumental in prosecuting any claim for pension or bounty land, who shall directly or indirectly contract for, demand, or receive or retain any greater compensation for his services, or instrumentality in prosecuting a claim for pension or bounty land than is provided in the title pertaining to pensions; or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the

pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a high misdemeanor, and, upon conviction thereof, shall for every such offense be fined not exceeding five hundred dollars, or imprisonment at hard labor not exceeding two years, or both, at the discretion of the court."

This indictment as originally drawn and returned into court by the grand jury contained nine counts, but as the case now comes to you, in view of the previous record thereof, the defendant is on trial on only three of those counts, and in the discharge of your duty you are concerned with only the three, viz, the first, third, and seventh counts in this indictment. The first one reads as follows: "The grand jurors of the United States within and for the western division of the western district of Tennessee, in said sixth circuit, duly elected, impanelled, and sworn and charged to inquire in and for said district aforesaid, in said circuit, upon their oaths present that L. W. Humes, yeoman, of the county of Shelby, State of Tennessee, and late of the circuit aforesaid, to wit, on the first of April, 1895, in the county of Shelby aforesaid, State of Tennessee, and in the circuit and division of the district aforesaid, to wit, Memphis, in said county and within the jurisdiction of this court, unlawfully and with force and arms did wrongfully withhold from William Anderson a large sum of money, to wit, $486.50, the same then and there being part of pension money allowed and due by the United States to the said William Anderson, and the said Lowry W. Humes then and there being agent for and a person instrumental in prosecuting a claim of said William Anderson for a pension aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

The third count is: "And the grand jurors aforesaid upon their oaths present that the said Lowry W. Humes, on the first of April, 1895, at Memphis aforesaid, in the division and district aforesaid, unlawfully did wrongfully withhold from one Isaac Bloodson a large sum of money, to wit, $517.20, the same then and there being part of the pension allowed and due by the United States *and* the said Isaac Bloodson, and the said Lowry W. Humes then and there being an agent for and a person instrumental in prosecuting a claim of said Isaac Bloodson for the pension aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

And count seven is as follows:

"The grand jurors aforesaid upon their oaths aforesaid further present that the said L. W. Humes, on the first of April, 1895, at Memphis aforesaid, in the division and district aforesaid, unlawfully did wrongfully withhold from one Joshua A. Haynes a large sum of money, to wit, the sum of $116.00, the same then and there being part of the pension money allowed and due by the United States to said Joshua A. Haynes, and the said L. W. Humes then and there being agent for and a person instrumental in prosecuting the claim of said Joshua A. Haynes for the pension aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

These three several counts in the indictment charge the defendant with independent and distinct offenses growing out of distinct transactions—viz, in the first count he is charged with withholding from William Anderson a part of a pension due to Anderson, and in the third count the charge is in respect to the Bloodson pension claim and withholding that from him, and in the seventh count with

the Joshua A. Haynes claim or pension—and the defendant is on trial on each of these counts. It is competent for the jury, in such disposition as they make of the case, to convict the defendant, if they convict him at all, on all of the counts—three of the counts—and in respect to all three of the transactions, or it is competent for the jury to convict him on one or more, and acquit him on one or more. The defendant, by his plea, says he is not guilty of the charge, and, having thus denied the charge, it devolves upon the Government, before it can ask a conviction, to establish his guilt by proof, on one or more of the counts, to the satisfaction of the jury and beyond a reasonable doubt.

If the Government has so established his guilt by proof on one or more of the counts or all of them, then the jury should convict. If the Government has not so established his guilt on all or any of the counts, then the jury should accordingly acquit. The defendant is presumed to be innocent, as every other citizen within the peace of the State is presumed to be. It is a presumption that attends him at all times, under accusation as well as otherwise, and is an answer to any accusation against him until that presumption is overturned by proof on the part of the Government which establishes his guilt beyond a reasonable doubt. Now, the rule in a criminal case in respect to the quantity of proof necessary is different from what it is in a civil case.

In a civil case the jury may decide the case according to the preponderance of the testimony—that is, as it may weigh in favor of the one side or the other in the scale of the controversy—but in a criminal case and as against the defendant that is not sufficient. The proof must satisfy the jury of his guilt beyond a reasonable doubt. Now, what is a reasonable doubt

is a matter somewhat easier of conception than definition, but the proof of his guilt, in order to overturn the presumption of innocence, should be such as to exclude all reasonable doubt. It doesn't necessarily exclude all doubt. By a reasonable doubt is meant a doubt arising out of the evidence in the case or the want of sufficient evidence.

It is not a doubt suggested by the imagination outside of the proof. It is not a doubt suggested by any feeling of mercy, by any feeling of sympathy, for the one side or prejudice against the other; but is an honest, substantial misgiving as to the guilt of the defendant, after the jury has attentively and conscienciously weighed or considered all the testimony in the case on both sides. If, after you have considered all of it with the view honestly to ascertain the truth and with no other motive (as you will), you are not satisfied beyond a reasonable doubt, why you should acquit. If, after you have so considered it, the jury believes or feels that notwithstanding the proof the defendant may be innocent, that is a reasonable doubt and the defendant should be acquitted.

If, after the jury has carefully considered the evidence faithfully and earnestly with a view to ascertain and declare the result, the jury is unable to say how it is, why that is a reasonable doubt, and the defendant in such a condition of your mind as that is entitled to an acquittal. If, however, it excludes all reasonable doubt after the exercise of your reason and judgment as men, why then there would be no reasonable doubt, of course, and the defendant should be convicted. Now, the defendant is permitted to testify in his own behalf, and the fact of his motive or interest to escape punishment no longer disqualifies him as a witness. He is a

competent witness, and it becomes your duty to accept him as competent, and to duly weigh and consider his testimony, and the motive that he labors under, no longer disqualifying him as a witness, goes to his credibility and is to be considered by you as a circumstance in determining what weight you will give to his testimony given in his own favor.

You should consider the fact that he labors under a strong motive to escape conviction and punishment or disgrace by testifying to a state of facts that exculpate him from the charge against him, and you are at all times to weigh what he says in connection with that circumstance as going to his credibility, and, having done so, you give to his testimony such weight as you may think it entitled to under all the circumstances. You will, of course, look to his manner, as you would the manner of any other witness on the stand, and the reasonableness or unreasonableness of his testimony; to its agreement or disagreement with your experience and with the other testimony in the case, both positive and circumstantial. If there is a conflict of evidence, as I think there is in this case, it is your duty first to so reconcile the evidence, if you can do so, as to make each witness or set of witnesses speak the truth. If the conflict is irreconcilable or of such a character as that it cannot be reconciled by the jury consistently with honesty on the part of the witness, then it is the duty and the province of the jury to say which witness or set of witnesses has stated the truth and which has not.

If in what the court says to you in restating the testimony or in indicating the inferences to be drawn from it the court misstates the testimony, according

to your recollection, or if the court expresses a view of it, if it does express any, not in accordance with your view after you have carefully considered it, it is your duty to follow your own recollection and your own view, the court merely meaning to try to assist you by such instructions as may be properly given; but it is your duty to finally pass upon the question of the defendant's guilt or innocence. Discrepancies between witnesses as to time, growing out of the frailty of human memory, *is* ordinarily not a circumstance that effects the testimony of or discredits a witness. It is too common an experience that memory fails as to dates, time, and distance, and it is only when the jury believe that a date has been deliberately fixed upon and adhered to with a view to pervert the fact that that would be a circumstance that discredited a witness's testimony.

Now, with these general observations that are applicable and will be kept in mind by you throughout in the case, we come to the testimony in the case, and in respect to that it appears from the statute, as you have observed, that it is necessary in order to make the case against the defendant (first) that he must have been the agent or attorney of the pensioner, or he must have been instrumental in the prosecution of the pension claim before he falls within the category of the persons who are subject to the provisions of the statute, and (secondly) he must withhold from the pensioner all or a part of what was due the pensioner claimant, so that two propositions are necessary to be established: That def't was an agent or instrumental in the prosecution of the claim, and, secondly, that he withheld from the pensioner money that belonged to the pensioner, some part of the pension that was allowed.

Now, desiring to get the jury down to the real issue in this case as it comes to you, leaving the jury free to find for itself, the court is of opinion that, considered in reference to either the Government's proof or the defendant's, and with reference to the written evidence or the oral, that the defendant was instrumental in the prosecution of these claims in such sense as that if he withheld the money he would be within the provision of the statute and guilty.

That brings you to the fact, then, of whether or not he did withhold these pension claims. Taking up, then, the count in reference to the Anderson claim: Now, there is a direct conflict between the defendant and his own evidence and that of the claimant, Anderson, as to who got the proceeds of that check. Anderson states that he had paid him $50.00 of it at his office in person and in money, and that that is all of it that he ever obtained, whereas the defendant, Humes, says that he delivered to him the check for the full amount, and that he went away from his office to the bank to get it cashed, and that he had nothing further to do with it and knew no more of it. Now, both of these statements can't be true.

Whether they are deliberately false or the result of mistake or misconception, they are not both true. The claimant stands in his testimony directly opposed to that of the defendant upon that point, and that is the real issue in respect to this Anderson transaction, viz, who got the proceeds of that check? If Mr. Humes got and retained the proceeds or retained any part of it above the notary's fee, then he is guilty, whereas if Anderson got it that is the end of the case so far as that count is concerned, or if, under the rule stated, you have a reasonable doubt

about how that is, the defendant is entitled to an acquittal. Now, then, in such a conflict as that you naturally look for corroboration of Anderson on the one hand and Humes on the other, and with that view I will call your attention briefly to what the testimony of supporting witnesses on the one side and the other is as I recollect it. Anderson says he went immediately to the stock yard, to Peter Finley, with his hand on the $50.00 from the time he left Humes's office until he got to the yard, and that he there made known the fact to Peter Finley, and Peter Finley counted the money, and in that Peter Finley substantially agrees with Anderson as to that fact. Afterwards Peter Finley says that he went in company with Mr. Laughlin, but in the absence of Anderson, to the office of Mr. Humes and inquired about this $50.00 that had been paid to Anderson, or, rather, about the Anderson pension; that they went there for the purpose of finding out why it was that Anderson got no more than fifty dollars, and they state—himself and Mr. Laughlin, who appears to be an intelligent man and is a member of this bar—they went to Mr. Humes' office, as they stated, and called him into another room, and asked him about this thing. They say that Mr. Humes said that the check had come that morning (I am quoting it substantially), and that ten dollars of it went as an attorney's fee, and that he paid Anderson fifty dollars, and if you believe that Humes stated that, that corroborates Anderson's testimony as to his version of this transaction, and if you believe that Mr. Humes deliberately and understandingly made that statement to Peter Finley and Mr. Laughlin, as they understand it, viz, that he paid him $50.00 and retained $10.00 as attorney's fee, it would be a strong circumstance against Mr. Humes.

It is contradictory to what he now states before the jury on the stand, and it is inconsistent with the transaction as he now details it, and is inconsistent with his innocence, as it is now maintained. Now, did they understand Finley and did Finley understand them in that conversation? Its value depends on the fact, of course, that it was deliberately made by Humes, and that it was correctly understood and communicated by Finley and Laughlin. It requires that to make it of value as an admission; but if understood, and correctly testified to by them, and deliberately made by Humes, as I have stated to you before, it becomes a strong circumstance. It is impossible that what he said then could be true, and that what he now says could be true; and it is impossible, in view of the facts now before you, that a statement of that sort could be true and he could be innocent, because if he paid him $50.00 he don't pretend that he otherwise paid him the pension money, and it would warrant you in the inference that he withheld the remainder of it.

Now, in determining whether that was deliberately and understandingly made, you may look to the circumstances in which you went to Mr. Humes' office and the time that was devoted to the inquiry of the answer—if it was only a few minutes, to that circumstance; if it was where he was pressed with other business, to that circumstance—and determine whether it was deliberately and understandingly made, because if it was, in the court's opinion, that is a strong circumstance in this case. Now, then, when you turn away from that side of it and the corroboration, Mr. Humes says that Mr. Laughlin and Mr. Finley misunderstood him; that he said to them that there was due Anderson about five hundred and fifty dollars, and that the question of whether it was all or not was not mentioned (I am

stating my recollection of his testimony, and it is for you to remember it), and that they seemed satisfied with that and went away, and that it was but for a moment and casual, and that they misunderstood him if they understood it as they say. Now, how is this? That is the question for you to say, if you can.

Mr. Humes denies that, and denies that he paid Anderson $50.00 in money at all on that occasion or a cent; and while we are on the subject of fees I may as well get that out of the way, because there is enough of dispated matter here. Mr. Finley didn't claim in his testimony before you that he had any charge against that fund or any claim against Anderson on account of which he could have retained it or held it, except the fifty cents, notary fee, and says that he did not retain any more, but that he turned him over the check, and that fifty cents was brought back to him by Saunderlin. Now, then, the section under which he is indicted is a section intended——

JURYMAN. You had reference to Mr. Humes, didn't you? You said Mr. Finley.

The COURT. Yes, sir.

Under the section under which he is indicted it is intended to prevent withholding from the pensioner any part of his claim, and it would under that section have been lawful to charge his notary fee of fifty cents; and the subsequent statute, the one under which this pension is issued, prohibits a notary from charging that fifty cents, and requires that he shall perform that service for nothing; but if Mr. Humes did charge the fifty cents, the subsequent statute doesn't make that a criminal offense; and if he charged the fifty cents and is, without more, otherwise guiltless about this matter, there is no offense.

So that, did he withhold from Anderson all or any substantial part of that pension? If so, he is guilty, and you should convict him; and if not, or if you have a reasonable doubt, acquit him. Now, in addition to Mr. Humes' statement on that point, he supports himself by the witness Sanderlin, a colored man, who swears that he went with Anderson, a colored man, to the bank, identified him, and that he obtained the money on that check; that he knows Anderson as a soldier; was acquainted with him in the Army. Now, if that is true, what Anderson said about it can not be true, and if what Sanderlin says is true, if Mr. Humes had made the statement to Finley and Laughlin, which they say he did, it would not have been a true statement; so that there is, on that point, a hopeless conflict in the evidence—in its terms and its implications—and you have got that to deal with.

Now, that is what Sanderlin says, and Mr. Humes, junior, the half-brother of the defendant, upon that same point states that he remembers cashing the check and paying the money to Anderson, and that it was done on the 8th of October instead of the 29th, and the time and method of payment is in conflict in that respect. Anderson and the witnesses and circumstances, so far as they corroborate Anderson, tend to show a payment on the 29th of October, whereas the books of the bank show that the check, whoever got it, was paid on the 8th of October. Now, did Humes get that check on the 8th of October and keep it until the 29th, and then pay the fifty dollars to Anderson, as Anderson states and as the corroborating testimony of Anderson shows, or was it paid on the 8th to Anderson or to Hume?

Now, young Humes, and by that I mean his half brother for the present, says that he remembers the

transaction; has a personal recollection of it because it was a large amount paid to a darkey and because he afterwards saw Anderson and remembered when he did see him, and recognized and now recognizes him as the man to whom he actually paid the cash. That is the corroboration of Humes so far as the Anderson transaction is concerned. The Government's contention is that in fact Humes took that check there on the 8th of October himself and procured it to be cashed, and that the younger Humes has no recollection of it at all except such as he has, in the interest of his brother, actually led himself to believe since, and that on the 29th of October that he kept that money until that time and then paid Anderson fifty dollars, as Anderson says, and in respect to which he is corroborated by Finley and Laughlin and by the elder Finley, so far as the date when his cow was paid for is concerned. Now, you have got the conflict to deal with. What interest did Finley have and Laughlin have to testify to anything but what they understood to be the truth, and did they correctly understand it? You may look to the fact that Sanderlin was in the employ, to an extent at least, of Humes, and that the younger Humes was his half brother, and to every other fact and circumstance in the case that may enable you to decide that manifest conflict between the proof on the part of the Government and that on the part of the defendant, so far as the Anderson transaction is concerned. Among other things, you may consider for what it is worth the fact, as the case comes before you, that Mr. Humes, so far as it is developed, was doing or attempting to do this work for nothing but the notary's fee, as a question affecting his testimony. Then, on the part of Anderson, you may consider the fact whether Anderson knew before he drew that pension the approximate amount of it,

and the fact that personally he made no complaint about it, and what would or what has been Anderson's motive for undertaking to claim that he only got $50.00 when he got all. These are all things for you to consider.

Another circumstance is, if Humes started out to swindle Anderson out of his pension you may consider the fact that, according to what Anderson says, out of a sum of $536.40 Humes took all of it except $50.00. It is not a case where he undertook to take some of it—a small part of it—but took all of it except $50.00. If Humes withheld from Anderson his certificate of pension and the other evidence of the amount of his pension with the view to keep concealed the real amount from Anderson and his counsel or his friends, that would be a circumstance against Mr. Humes, if that was his purpose, if you believe that, and you may consider the fact if it be so that he withheld them as bearing on that. If, however, he offered the papers to Anderson as substantially he says, and Anderson simply declined to take the papers, why then there would be nothing improper in Mr. Humes putting the papers away. Now, I have undertaken, somewhat tediously, to direct your attention to this conflict over the Anderson transaction because the most proof in the case is in regard to that and the most extensive conflict is in regard to that, and the testimony on behalf of the Government, particularly in the corroboration by Finley and Laughlin, makes the case against Humes in regard to the transaction stronger than it is in regard to the other, and if you should convict the defendant Humes on the Anderson transaction, it wouldn't necessarily follow that you would convict him on the third and seventh counts, in regard to the Bloodson and Haynes transactions.

Nothing would follow one way or the other about that, because the fact that a man is guilty of a crime in respect to one transaction is not a ground on which you could convict him on another. Each offense must stand on its own merits. Having thus called your attention to the testimony and attempted to sum it up and to state the conflict in regard to the Anderson claim, I pass for a moment, and only a moment, to the Bloodson transaction, because what has been said to you generally and in respect to the Anderson claim applies in a large way to the Bloodson claim. Now, Bloodson states that Humes paid him out of $567.20 just $50.00 also, and that is all that he ever got.

Bloodson says that he got that on the 27th of December, after Christmas, what Humes did pay him. Humes says that he endorsed and delivered the check to him. I should have said, in stating the evidence in conflict on the Anderson claim, that in addition to what Humes says and Saunderlin and the younger Humes says that that colored man, Franklin, also says, as you will remember, that he saw Anderson leave the office in company with Saunderlin to go to the bank, with the check in his hand, and so that corroborates Mr. Humes' statement on that subject. You have, then, Anderson, with such corroboration as the two Finleys and Laughlin furnish, and Humes, with such corroboration as Franklin, Saunderlin, and Mr. Humes—his half brother—furnish, to deal with, together with the circumstances, as you may find it, about the time when that payment was made. Now, passing to Bloodson: Humes says, on the contrary, that he paid Bloodson the 24th of December, the day before Christmas—that is, that he endorsed the check and delivered it to him just as he did in the Anderson case, and

that he told Saunderlin to go with him to the bank and show it to him; and Saunderlin says he did so, and went to the doorstep and nodded to the cashier, Mr. Humes, junior, which was recognized as indicating that he knew him, and Mr. Humes says that he cashed the check; that he remembers it, and recognizes Bloodson on account of his peculiarly tall appearance and white hair and whiskers, and Franklin also says that Bloodson was there, and went off on that day, and Mr. Humes's son, in addition, says that he was at his father's office on the 24th day of December and saw Bloodson there, and saw him talking to his father, and says, practically, nothing beyond that.

Well, of course, if Bloodson was there on the 24th day of December, as the son says, that corroborates what Humes says about that and what Saunderlin says about it, and would also corroborate what the half-brother says about it, and Bloodson is corroborated in his statement by Mrs. Snyder and her daughter, who say that he spent the 24th at their house all day at work. Well, now, he couldn't have been there on the 24th all day at work and been here at the bank getting that money, and there is another conflict; and what has been said to you is applicable, in a general way, to that.

Then passing to the seventh count, which involves the Haynes transaction, Haynes says that the amount due Haynes was $232.40, and that out of that he gave him money, so that when he deposited $75.00 in the bank he had $41.00 left, and paid $1.00 of that on a debt that he owed, and carried home with him $40.00, which would make, I believe, $116.00, and would make exactly half the amount coming from him, except the odd cents. So that, as the case is testified to by these old colored men, Mr.

Humes took all of Anderson's money except $50.00—took out of $536.40—and of Bloodson's $567.20 took all of that but $50.00, and took half of Haynes's. Now, of course, it is a minor matter, but in considering this testimony you take into account also the intelligence of the witnesses and their reliability as a medium for correctly understanding and correctly communicating the facts known to such witness. You look to their manner on the stand before you, whether that is frank, open, free. The fact of a witness's ignorance don't discredit the witness. It is a circumstance merely to determine how far he is reliable and how far he understood the situation and could tell it. An ignorant man could be just as honest as an intelligent one, so far as he could understand the fact. Now, this pension law, under which the defendant is indicted, is a provision intended to protect. It is a new phase of the old problem in legislation of protecting the weak against the strong, and was designed, among other things, to protect ignorant pensioners against all impositions by men who undertake to be instrumental in the prosecution of their claim and then withhold from them what was due them and convert it to their use.

You take this case now and consider all the testimony, both direct and circumstantial, and in doing so you are simply discharging the duty which the law has devolved upon you, most likely unwillingly. The Government has brought you here by the power of its process and has put you in the jury box, exacting from you some of your time, which every citizen owes the Government, and you have been sworn to try the case according to the law and the facts, and when you enter upon the discharge

> of that duty you dismiss from your consideration anything like prejudice, sympathy, friendship, ill will, or any such thing whatever. You will earnestly and conscientiously try to find out what the truth is and declare it without respect to persons, position, or other consideration, and after you have done that, if you are satisfied of the defendant's guilt beyond a reasonable doubt, so that your judgment and conscience would rest easy on a conviction, why, then, convict, and if you are not so satisfied acquit him.
>
> Now you can take this case, and the court will be in session until five o'clock, and, knowing that some of the jurors desire to get away, if I knew you would be able to dispose of the case to-night, I would open court to see if you are agreed to-night; but the jury may retire now and report about five, after having considered for that length of time whether you have agreed or whether you think you can agree to-night if the court is open; but you should not be in such hurry that you do not give this case the attention its importance demands.

However, as stated before in this brief, and as now reiterated, the position of the United States is that there is but one assignment of error based upon an exception taken so as to bring it within the rule of law well established by this court for review here, and that is the third assignment of error based on the refusal of the court to give the special instruction requested at the end of the charge on page 181 of the record.

JAS. E. BOYD,
Assistant Attorney-General.

BLEED THROUGH POOR COPY

No. 952. 580
Motion for D. C.

Filed Apr. 11, 1896.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
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In the Supreme Court of the United States.

OCTOBER TERM, 1895.

LOWRY W. HUMES, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. 952.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

LOWRY W. HUMES, PLAINTIFF IN ERROR,)
v.) No. 952.
THE UNITED STATES.)

MOTION TO ADVANCE.

The plaintiff in error was indicted in the circuit court of the United States for the western district of Tennessee at the May term, 1895, for wrongfully withholding from a pensioner certain money, a part of a pension he was instrumental in procuring. He was tried, found guilty, and sentenced to imprisonment at hard labor in the Ohio penitentiary for the term of two years, and to pay a fine of $500 and costs.

He is now at large on bail in the sum of $4,000.

The Solicitor-General, on behalf of the United States, respectfully moves the court to advance the case on the docket, and set it down for argument on a day convenient to the court during the next term.

Notice of this motion has been served on the counsel for the plaintiff in error and proof of service filed with the clerk.

HOLMES CONRAD,
Solicitor-General.

No. 480. 150.
Motion Papers for D. & Co
Filed Jan. 25, 1897.

Office Supreme Court, U. S.
FILED
JAN 25 1897
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

LOWRY W. HUMES, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
} No. 480.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

LOWRY W. HUMES, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 480.

MOTION TO ADVANCE.

Plaintiff in error was indicted and convicted in the circuit court of the United States for the western district of Tennessee for unlawfully withholding moneys from pensioners. A motion was made to advance the case on the docket and set it down for a hearing. This motion was granted, and the case set down for hearing on the second Monday of the present term. Plaintiff in error failed to print the record, and for this reason this writ of error was dismissed in October last. Subsequently, in December last, with the consent of the Attorney-General, the dismissal was set aside and the case restored to the docket. The record has now been printed.

Plaintiff in error has thus by his own negligence obtained a delay of some months in the hearing of his case.

The Solicitor-General, in order to prevent further delay on this ground, respectfully moves the court again to advance the case on the docket and set it down for hearing at an early day during the present term.

Notice of this motion has been served on the counsel for plaintiff in error, and proof of service filed with the clerk.

HOLMES CONRAD,
Solicitor-General.

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HUMES *v.* UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

No. 150. Submitted February 21, 1898. — Decided April 25, 1898.

It is again decided that it is no ground for reversal that the court below omitted to give instructions which were not requested by the defendant.
The charge of the trial court was sufficiently full and elaborate.
It is again held that this court cannot consider an objection that the verdict was against the weight of evidence, if there was any evidence proper to go to the jury in support of the verdict.

THE plaintiff in error was indicted for violating section 5486 of the Revised Statutes of the United States. The indictment contained nine counts. They, respectively, charged the withholding and detention of certain sums of money for pension fees in excess of the amount allowed by the statute to be charged, to wit, the first, third, fifth, seventh and ninth counts; that defendant withheld, respectively, from William Anderson, Isaac Bloodson, Ann Galloway and Whitfield Pryor the several sums of $486.40, $517.20, $120.13, $116 and $15.80; the second, fourth, sixth and eighth counts charged that he "did demand from said persons, respectively, the said several sums." The jury returned a verdict of guilty as to the first and third counts, a verdict of not guilty as to the second, fourth, seventh,

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eighth and ninth counts, and a *nolle prosequi* was entered by the United States attorney as to the fifth and sixth counts.

There are eleven assignments of error. The first part of the eighth and eleventh assignments relate to a failure on the part of the court to give certain instructions. The record does not show that there was a request for such instructions. The second, fourth, fifth, sixth, seventh, part of the eighth, ninth and tenth assignments relate to alleged error in the instructions given by the court. No exception is shown by the record to have been taken. The twelfth and thirteenth assignments of error are based upon the alleged fact that the verdict was against the weight of evidence. The third assignment of error is based upon the refusal of the court to give an instruction which was requested.

The statement of the record is, "the defendant asked the following special instruction, which was refused: 'Unless you find from the evidence that the defendant was the attorney, agent or other person engaged in prosecuting the pension claims of Anderson, Haynes and Bloodson, the court instructs you to find for the defendant. I think I have given this instruction in the general charge, and believing the charge on this point is sufficiently full, further instruction is declined. Clark, J.' To which action and ruling of the court in so refusing to give said special instructions the defendant then and there excepted."

Mr. James M. Greer for plaintiff in error.

Mr. Assistant Attorney General Boyd for defendants in error.

Mr. Justice McKenna, after stating the case, delivered the opinion of the court.

We cannot regard as error the omission of the court to give instructions which were not asked. In *Isaacs* v. *United States*, 159 U. S. 487, 491, Mr. Justice Brown said: "It is no ground for reversal that the court omitted to give instructions,

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where they were not requested by the defendant. It is sufficient that the court gave no erroneous instructions. *Pennock* v. *Dialogue*, 2 Pet. 1, 15; *Texas and Pacific Ry Co.* v. *Volk*, 151 U. S. 73, 78." Nor are instructions which were given but not excepted to subject to review. *Tucker* v. *United States*, 151 U. S. 164; *St. Clair* v. *United States*, 154 U. S. 134, 153.

We are confined, therefore, to the consideration of the second assignment of error. It is not well taken. As the court said in refusing it, the charge of the court was "sufficiently full." The court read to the jury section 5485 of the Revised Statutes, and stated that the indictment was predicated on it. The statute provides that "any agent or attorney, or any other person instrumental in prosecuting any claim for pension or bounty land, who shall wrongfully withhold or wrongfully demand from a pensioner or claimant any portion of the pension or claim allowed, shall be guilty of a high misdemeanor."

And then, after explaining the indictment and stating the rules of evidence, degrees of proof required, the court said: "Now, with these general observations that are applicable and will be kept in mind by you throughout the case, we come to the testimony in the case, and in respect to that it appears from the statute, as you have observed, that it is necessary in order to make the case against the defendant (first) that he must have been the agent or attorney of the pensioner, or he must have been instrumental in the prosecution of the pension claim before he falls within the category of the persons who are subject to the provisions of the statute, and (secondly) he must withhold from the pensioner all or a part of what was due the pensioner claimant, so that two propositions are necessary to be established: The defendant was an agent or instrumental in the prosecution of the claim, and, secondly, that he withheld from the pensioner money that belonged to the pensioner, some part of the pension that was allowed."

The language of the court was explicit and unmistakable. It is fuller and more elaborate than the instruction requested.

The alleged fact that the verdict was against the weight of

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evidence we are precluded from considering, if there was any evidence proper to go to the jury in support of the verdict. *Crumpton* v. *United States*, 138 U. S. 361; *Moore* v. *United States*, 150 U. S. 57, 61.

In this case there was certainly evidence proper to go to the jury.

There is no error in the record, and the judgment of the Circuit Court is

Affirmed.

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